

# **Conflict and Cooperation: Divided and Unified Government during the George W. Bush Presidency**

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## ABSTRACT

This study aims at substantiating the hypothesis that there was no significant difference in the amount of important legislation enacted during unified or divided governments during the George W. Bush administration, but there was a significant change in the number of vetoed bills and signing statements depending on what party was in control of Congress. The alternation of unified and divided governments between 2001 and 2007 allows a comparative study of the cooperation and the conflicts between the executive and the legislative branches.

Significant legislation was selected following David R. Mayhew's method, using end-of-the-year wrap-up articles published by the *Washington Post* and the *New York Times*. This selection was subjected to a validation process using the annual compilation made by the *Congressional Quarterly Almanac Plus* for each year. The impact of the 9/11 terrorist attacks was taken into account, and the hypothesis was reevaluated after the emergency legislation enacted was set aside. The resulting inventory confirmed that there was no significant difference regarding legislative productivity between divided and unified governments for the time period under consideration. This study extended the research to the relations between the executive and the legislative branches of the government. The party control conditions had a substantial influence on the level of conflict between the president and Congress. The number of presidential vetoes increased dramatically in conditions of divided party control, while the number of signing statements decreased accordingly.

The study further explores the social and political conditions that made possible and necessary the enactment of significant legislation as well as the complex relations between the political actors that are instrumental in passing legislation in Congress. Most of the legislation addressing national security issues passed in Congress with bipartisan support, while most of the legislation addressing domestic policy issues and trade passed in Congress along party lines. President George W. Bush was successful in promoting his political agenda during his first term in office, while after his reelection the Republican-controlled Congress gradually started to oppose him. After the midterm elections of 2006, the Democrat-controlled Congress promoted its own political agenda, and the conflict with President Bush materialized in seven vetoed bills. The legacy of the George W. Bush controversial presidency, marred by terrorist attacks, wars and natural disasters, is difficult to assess when events still have a widespread emotional impact, but future generations will have a better perspective and a better understanding of the long-lasting consequences of these troubled times.

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## TABLE OF CONTENTS

Abstract.....	ii
Acknowledgements.....	iii
Table of Contents.....	iv
 CHAPTER ONE: INTRODUCTION.....	 1
1.1 Thesis Topic and Hypothesis.....	1
1.2 Historical context.....	2
1.3 Scholarly Literature Background.....	4
1.4 Methods and Sources.....	5
1.4.1 Methods.....	5
1.4.2 Primary Sources.....	8
1.4.3 Secondary Sources.....	8
1.5 Terms and Central Concepts Used in the Thesis.....	9
1.6 The Structure of the Thesis.....	12
CHAPTER TWO: SCHOLARLY LITERATURE.....	14
2.1 Introduction.....	14
2.2 General Considerations on Divided versus Unified Government.....	15
2.3 Causes of Divided Government.....	16
2.4 Consequences of Divided Government: Divided Opinions about Divided Government.....	19
2.4.1 Negative Consequences of Divided Government.....	19
2.4.2 Divided Government is as Productive as Unified Government.....	21
2.4.3 Benefits of Divided Government .....	22
2.5 Conclusion.....	23
CHAPTER THREE: DATA COLLECTION AND ANALYSIS.....	25
3.1 Introduction.....	25
3.2 Data Collection .....	26
3.2.1 The 107 <sup>th</sup> Congress (2001-2002).....	26
3.2.2 The 108 <sup>th</sup> Congress (2003-2004).....	28
3.2.3 The 109 <sup>th</sup> Congress (2005-2006).....	29
3.2.4 The 110 <sup>th</sup> Congress (2007).....	30
3.3 Data Analysis.....	32
3.4 Presidential Strategies in Dealing with Congress under Divided and Unified Governments .....	37
3.5 Vetoed Legislation.....	44
3.6 Conclusion.....	49
CHAPTER FOUR: DOMESTIC POLICY.....	51
4.1 Introduction .....	51
4.2 The Unified Government of 2001 .....	52
4.3 The Divided Government of 2001 and 2002 .....	54
4.4 The Unified Governments of 2003-2006.....	58
4.4.1 Social Policies.....	59
4.4.2 Tax Reductions and Fiscal Policy.....	61
4.4.3 Anti-abortion Related Legislation.....	63
4.4.4 Energy Policy.....	64
4.4.5 Constituency-oriented Legislation .....	66

4.5 The Divided Government of 2007 .....	66
4.6 Trade-related Legislation .....	70
4.7 Conclusion .....	72
CHAPTER FIVE: NATIONAL SECURITY .....	75
5.1 Introduction .....	75
5.2 President Bush's First Term in Office .....	75
5.2.1 United States under Attack .....	76
5.2.2 United States at War .....	79
5.2.3 Iraq War .....	83
5.2.4 Abu Ghraib Prisoners Mishandled .....	84
5.3 President Bush's Second Term in Office.....	86
5.3.1 First Rifts in the Unified Government-Republicans Oppose the White House .....	86
5.3.2 "Do-Nothing" Congress on the Way Out.....	88
5.3.3 Open Confrontation between Congress and the President.....	90
5.4 Conclusion.....	92
CHAPTER SIX CONCLUSION.....	95
Appendix 1 .....	100
Appendix 2.....	105
Bibliography.....	108

## CHAPTER ONE: INTRODUCTION

*“...that despite our grief we may not become the evil we deplore.”*

Reverend Nathan D. Baxter

### 1.1 Thesis Topic and Hypothesis

This thesis examines the differences between divided and unified U.S. federal governments and the extent to which control of Congress by the Republicans or the Democrats had an effect on the policy-making process during the George W. Bush administration. The research focuses on President George W. Bush's time in office because his presidency experienced the alternation of power in Congress, providing a good opportunity to examine the impact of both unified and divided governments on the legislative productivity and the evolution of his relation with Congress, whether under Republican or Democrat party control.

The general hypothesis under scrutiny is that significant legislation was passed irrespective of which party controlled Congress, and that the number of important bills enacted into major laws was not significantly different during divided or unified governments in the examined time frame, while vetoed legislation and the number of signing statements were influenced by the way the balance of power was tilted in Congress.

The larger question to be addressed is why and how important legislation is passed both during unified and divided governments. The answer to these questions provides the background of the social and political conditions leading to the enactment of significant bills and reveals the mechanisms and the strategies at work in the complex interaction between the presidency and the U.S. Congress. Another issue to be examined is the impact of crises and emergencies on the government and the policy-making process in the aftermath of the September 11, 2001, terrorist attacks against the United States and of the devastation caused by Hurricane Katrina in August 2005. These dramatic events required immediate congressional actions, and partisan divisions were blurred as the congressional activity gained momentum and legislation was set on a fast track.

This study also explores the cooperation and the conflicts between the executive and the legislative branches of the federal government during George W. Bush's time in office. It is difficult to assess and to evaluate such recent events without the help of proper historical distance, a fact which might limit our perspective and impair objectivity. Moreover, the

effects of recent legislation might be overestimated or underestimated at the present moment; its effects can be seen and can only be fully appreciated in the future. Time will tell.

## **1.2 Historical Context**

In November 2000, George W. Bush was elected the 43rd president of the United States, after an extremely tight and controversial election, one of the closest and most disputed elections in the history of the United States. In fact, George W. Bush lost the popular vote to the Democrat candidate Al Gore, but he received more votes in the Electoral College. He was the first candidate in over one hundred years to lose the popular vote and still become president - since 1888, when Benjamin Harrison won the presidency in the same way. George W. Bush was declared the winner following the Supreme Court's decision to stop the recounting of the votes in the state of Florida.

During his first five months in office President Bush had the benefit of a Republican-controlled Congress, the first Republican president since Dwight Eisenhower to enjoy a unified government. However, the Senate was evenly divided and Vice-President Dick Cheney held the decisive vote, while in the House, the Republican majorities were slim. In May 2001, Senator James Jeffords of Vermont left the Republican Party and became an independent aligned with the Democrats, tilting the balance of power in the Senate in favor of the Democrat Party and putting the Republicans in minority. Nevertheless, two important pieces of legislation favored by President Bush were passed by Congress in 2001, the Economic Growth and Tax Relief Reconciliation Act, and the No Child Left Behind Act.

On September 11, 2001, the United States was subject to the deadly and well-coordinated terrorist attacks, initiated by the now well-known terrorist organization al-Qaeda and its leader Osama bin Laden, from the Taliban-controlled Afghanistan. These devastating attacks triggered the War on Terror conducted from Washington. The terrorist attacks on September 11 resulted in 2,973 casualties and redefined the political agenda of the American government, the fight against terrorism becoming its first priority. A number of important laws on national security were approved by both chambers in a spirit of unity and support, as the U.S. Congress and the American people rallied behind the president.

After Congress voted the Authorization for Use of Military Force, a blank check for President George W. Bush to take whatever action he saw fit to respond and conduct the war on terrorism, military operations were launched in Afghanistan in October 2001, and the Taliban government collapsed soon after. At the same time the United States came under a new string of attacks, this time it was the anthrax bacteria that was used to further terrorize

people working in the American government and in the media. The 9/11 terrorist attacks highlighted the inability of the federal agencies to coordinate their activities in order to prevent terrorist attacks on American soil and made evident serious intelligence failures, leading to extensive government restructuring: Twenty-two government agencies were assigned to one department in charge of domestic security, the Department of Homeland Security (DHS), following the Homeland Security Act of 2002.

Against the background of the tragic events of September 2001 that stunned the United States and the world, the 2002 midterm elections restored unified government, as the GOP regained control of the Senate and enjoyed a comfortable majority in the House. Even though the electorate was affected by the slow pace of the economy, the main concern was still terrorism. Fear and insecurity played a major role in the outcome of these elections. The popular president actively campaigned for weeks on behalf of the Republican candidates. It is interesting to underline the outcome of this election, because midterm elections usually result in gains for the opposition party, but this time the 2002 midterm elections restored the Republican control of Congress. Even though President Bush had the benefit of a unified government, the Republican Party was divided and many bills were killed not only as a result of partisanship, but also due to intraparty divisions.

In October 2002, Congress passed the Authorization for Use of Military Force Against Iraq; war was authorized by Congress, but it was launched without a formal authorization from the UN Security Council. Great Britain, Australia, Denmark and Poland joined the military operations, while France, Germany and Russia strongly opposed the use of force. On March 19, 2003, backed by the Republican Congress, the George W. Bush administration launched a wave of military actions against Saddam Hussein's dictatorial regime in Iraq. The military intervention was based on intelligence that failed to be confirmed on the ground later on, and on the belief that the Iraqi dictator was in possession of weapons of mass destruction, in contravention of the United Nations Security Council Resolution 687 at the end of the Gulf War in 1991. Even though the initial phase of the military operation was successful and the Iraqi military forces were defeated, and even though Saddam Hussein was later captured, the war was transformed into a bloody guerrilla confrontation with many American soldiers killed and even more victims among Iraqi civilians. In 2004 the situation was made worse because of the scandal generated by pictures released in the media, pictures of Iraqi prisoners being abused and humiliated at the Abu Ghraib prison near Baghdad.

Although public support for the war in Iraq declined, George W. Bush was reelected president of the United States in 2004, winning the elections against John Kerry, the



Democrat Party's candidate and a decorated Vietnam War veteran. The Republicans increased their lead both in the Senate and in the House. Congress remained under Republican control for the next two years and passed a number of laws mostly focusing on Republican-favored issues. Still, 2006 was the year of the first presidential veto because George W. Bush rejected the bill supporting federal funding for the human embryonic stem cell research. Congressional Republicans sided with the Democrats, while President Bush aligned himself with the social conservatives when he took this position and vetoed the bill.

George W. Bush's second mandate was marred by continuous insurgent attacks in Iraq, new investigations of alleged prisoners' abuse, and the devastations of Hurricane Katrina in the Gulf of Mexico. Following the public disillusionment with the George W. Bush administration, the midterm elections of 2006 resulted in a change of control in both the House and the Senate, and the United States once again entered a period of divided government after four years of uninterrupted unified Republican-controlled government. The winners of the elections, the congressional Democrats, had pledged to force a timeline for withdrawing the American troops from Iraq, but they were not successful in forcing a change of the military agenda. In spite of the unsuccessful attempts to force a timeline for the withdrawal of the American troops from Iraq, the 110<sup>th</sup> Congress intensified its legislative activity and increased its control of the executive.

Some legislation adopted in Congress was vetoed by the president, and even more bills were killed in the Senate by Republican filibusters; partisan divisions once again dominated the political life in Washington. It is interesting to point out that during his first five and a half years in office, President George W. Bush did not veto any bills passed by the Republican-controlled Congress until July 2006, when he vetoed the Stem Cell Research Enhancement Act. It was a unique record in modern times, but as soon as the Democrats took control of Congress, the President discovered his veto pen and vetoed seven bills in 2007. George W. Bush's presidency has had an unusually troubled and eventful course. It started with ambitious programs, but it was marred by natural disasters, terrorist attacks and subsequent wars that defined his presidency.

### **1.3 Scholarly Literature Background**

The scholars who have published studies about divided versus unified governments have themselves divided into three groups. The dominant point of view is that unified government is more efficient in passing legislation and that divided government often results in gridlock, leaving the impression that nothing gets done. Sundquist (1988) points out to the dysfunctions

of divided governments and underlines the difficult cooperation between the branches of the government. Legislative gridlocks and their consequences are examined by Binder (1999). According to Coleman (1999), unified government is more productive in respect to significant legislation and it is more responsive to public opinion. Kernell and Jacobson (2006) discuss divided government and a classic case of gridlock, the dispute between President Clinton and the Republican-led Congress regarding the U.S. budget in 1995.

An alternative point of view was introduced by Mayhew in 1991, claiming that divided government is as productive as unified government regarding major legislative enactments. Subsequently, more research has been done concerning the causes and the consequences of divided government, such as Cox and Kernell (1991), Fiorina (1996), Edwards, Barrett and Peake (1997), Jacobson and Kernell, (2008).

A third group of scholars argue that the legislation passed during divided government is more stable and is more likely to remain unchanged when the government changes, being adopted with bipartisan support. Niskanen (2003) and Slivinski (2006) also argue that divided government manages the economy better and that unified government statistically results in bigger budget deficits. Ornstein and Mann (2007) pointed to the dysfunctions of the unified government of 2005-2006. Chapter 2 presents in more detail the scholarly literature relevant for this study.

Which of these three groups does this study align itself with?

For the legislative output of significant legislation this study aligns with Mayhew's theory. However, this study explores more aspects of the complex governmental activity during George W. Bush's administration under both unified and divided governments. This study also examines the conflict between the executive and the legislative resulting in signing statements and vetoed legislation. The level of cooperation and the level of conflict between the George W. Bush administration and Congress are explored in different conditions of party control.

## **1.4 Methods and Sources**

### **1.4.1 Methods**

This study follows the ground-breaking work of David R. Mayhew who challenged the conventional widespread wisdom that divided government is plagued by stalemate, and thus the legislative output is adversely affected. In 1991, he succeeded in establishing a substantial inventory of significant legislation, using reliable criteria of selection. In order to compare the governmental activity during the Republican and the Democrat-controlled Congresses under

George W. Bush's presidency, this study selects important pieces of legislation and measures the legislative output using clear criteria. Major enactments that had a strong impact on the American society are selected in a law inventory for 2001-2007. Important legislation will be referred to as "significant legislation" or "major legislation."

Political commentators discuss the legislative activity of each session of Congress at the end of the year. Wrap-up articles published in the *New York Times* and the *Washington Post* are used in the first step of selecting important legislation. The next step is to validate the initial selection against key legislation identified by the pundits writing for the *Congressional Quarterly Almanac Plus*. This study aims to reveal with as much objectivity as possible the differences, if any, between unified and divided governments, but as Mayhew (2005, p.202) maintains, it is necessary to make some judgments, so subjectivity cannot be avoided altogether. The George W. Bush presidency was marked by serious moments of crisis when the government was forced to take action and respond to these exceptional moments in American history. The imperative of an immediate response masked the differences between unified and divided governments and this fact will be taken into account.

The activity of the American government materializes in the enacted legislation, as well as in the implementation of the laws at all levels of society. The U.S. Congress is involved not only in the making of new laws, but also in supervising by congressional oversight how these laws are applied. The legislative activity of the American government, be it unified or divided, can be analyzed from several points of view. One can use a qualitative analysis and examine the content of the legislation, but this approach is bound to be limited by subjectivity, reaching a conclusion that might or might not be relevant for other people. This method would therefore be better suited for analyzing the content of some specific laws and their impact on society, but it would be less suitable for the analysis of the governmental activity over a longer period of time. For this specific purpose, it might be better to establish clear criteria for selecting the relevant legislation and to compare the legislative output in times of unified versus divided party control. It is true that this method is still subjective since some judgments must be made, and the selection process in itself cannot be made 100% objectively. However, once the criteria have been established and the selection process is under way, this approach allows the researcher to make the transition from his/her subjective point of view to a more objective approach that permits a direct comparison and can be subjected to subsequent verification. In this study the research makes use of a combination of these two methods in order to be able to present a comprehensive picture of the American legislative activity during George W. Bush's presidency.

In order to study the differences in the legislative output during unified and divided governments, this thesis uses a quantification process similar to that used by political scientists such as Mayhew (1991 and 2005), Edwards, Barrett, and Peake (1997), Binder (1999), as well as Clinton and Lapinski (2006). Still, because this study focuses on unified and divided governments under George W. Bush's presidency, therefore only on seven years, a rigorous statistical analysis is not possible, but a direct comparison highlights the president–Congress relationship as a function of which party is in control of Congress.

In order to establish the inventory of significant legislation, this study has used similar methods as those used by Mayhew (2005). Wrap-up articles summarizing the congressional activity published at the end of the year by influential newspapers, that is the *Washington Post* and the *New York Times*, provided the fundament for building up the inventory of significant legislation (2001-2007). The information collected from these articles was corroborated and submitted to a process of validation using the *Congressional Quarterly Almanac Plus* for the respective year.

This research is in fact limited to materials only recently published, therefore corresponding to Mayhew's "Sweep One" methodology of identifying significant enactments in contemporary sources. Mayhew also used a "Sweep Two" methodology for corroboration, and he tested the data collected in "Sweep One" against retrospective scholarly analyses for the years 1946-1991. "Sweep Two" methodology is clearly not feasible in this study, given the short time interval, as it was not feasible for Mayhew's epilogue: "The Record during 1991-2002." (Mayhew, 2005) Nevertheless, instead of the "Sweep Two" methodology, this study validated the information already collected in the first phase using another contemporary, well-established and reliable source, the *Congressional Quarterly Almanac Plus*, published annually which provides comprehensive legislative reports for each session of Congress.

The content of legislation is difficult to quantify, but it can be assessed according to the potential impact on the American society and on the political mechanisms at work in Washington. The magnitude of the impact determines the significance of the enacted legislation. Experienced political commentators judged the significance of the legislation passed each year in end-of-the-year articles on congressional activity. This study included in the law inventory only the enactments considered important by them. Following Mayhew's model, all legislation included in the inventory was deemed to be significant. Still, some nuances can be made, as it is evident that some laws have a stronger impact than others. Moreover, experience shows that the historical perspective changes the hierarchy of the

importance of these laws. The initial data obtained, already corroborated by the *Congressional Quarterly Almanac Plus*, can be further validated from a future perspective as well, because the political scientists are certain to scrutinize George W. Bush's presidency and the legislation enacted during his time in office. For the time being, we rely on the sources mentioned above in order to set up our inventory of important, significant legislation.

### **1.4.2 Primary Sources**

Relevant articles from influential newspapers such as the *Washington Post*, the *New York Times*, and the *Boston Globe* are used as a first source in the process of identifying significant legislation passed by Congress between 2001 and 2007. Research is conducted on congressional activity using the electronic resource center of the Library of Congress for federal legislative information where data about bills and amendments, resolutions and texts of laws, congressional records and veto records are examined.

*Congressional Quarterly Almanac Plus* for each year is examined in detail and is used to corroborate the data extracted from the end-of-the-year articles rounding up congressional legislative activity. Opinion polls are studied in the records of the *Washington Post*. Some other statistical data are also examined. Valuable information was extracted by accessing primary sources at the Information Resource Center at the American Embassy in Oslo. *Congressional Quarterly* reports and other electronic resources such as the *White House* website, the *Senate* website, the *House of Representatives* website, and the *Speaker of the House* website, are used to complete and fill in the data necessary to achieve a comprehensive picture of the governmental activity in the timeline under scrutiny.

Media sources like the archives of CNN and BBC, as well as NPR bring additional insight into recent political events. Current developments, interviews and political analyses are followed as events develop. Presidential speeches and press releases make us better understand the participants' attitudes and allow us to compare the points of view of the White House and Congress. Last but not least articles from *Congressional Quarterly Guide to Current American Government*, *American Political Science Review*, *National Journal*, and other prestigious research magazines were of great help in evaluating the impact of the enacted legislation on the American society.

### **1.4.3 Secondary Sources**

The scholarly literature discussing intragovernmental relationships help us interpret and better understand primary sources and recent developments in the political arena, both from a

traditional and from an alternative point of view. The starting point of this study, as well as important guidelines for this research, came from Dr. Steven A. Shull's course, "Major Challenges to American Government and Politics." Samuel Kernell and Gary Jacobson's book *The Logic of American Politics* (2006) provided strong support for the study of important issues pertaining to the George W. Bush administration under both divided and unified governments. Two fundamental studies, one focusing on significant legislation passed during divided and unified governments, the other focusing on the causes and the consequences of divided government, have provided the backbone of the methodology used for analyzing the divided government under the George W. Bush administration: the two classics *Divided We Govern* (2005) by David Mayhew and *Divided Government* (1996) by Morris Fiorina. Another important source, relevant for studying political developments during the George W. Bush presidency and current issues in American politics is *The George W. Bush Legacy* (2008) edited by Collin Campbell, Berth A. Rockman and Andrew Rudalevige.

It is interesting to study how President Bush's working relationship with Congress changed when the Democrat Party took control of the legislative branch, following the 2006 midterm elections, and the attitude of Congress changed accordingly. In this respect valuable information is provided by Gary Jacobson and Samuel Kernell's *The Logic of American Politics under Divided Government – The Legacy of the 2006 Elections* (2008).

### **1.5 Terms and Central Concepts Used in the Thesis**

Some specific terms and concepts used in the discussion of unified versus divided governments need to be defined and clarified due to their extensive use throughout this study. Some of the equivalent terms used in the scholarly literature will be also presented.

***Divided government*** is the term used to define the situation in which one political party controls the presidency, and the political party in the opposition controls one or both chambers of Congress. Divided government is also referred to as "coalition government" (Sundquist, 1988) or "split party control of the presidency and Congress" (Conley, 2003). Until World War II, the American people commonly voted either for the Republican or for the Democratic Party for all federal offices, and that resulted in one party taking control of both Congress and the presidency; there were exceptions when occasional midterm elections resulted in a change of the party controlling one or both chambers of Congress, providing short periods of divided government.

This situation was changed after the electoral reform around the turn of the century when an interesting and puzzling phenomenon appeared in American politics and became

evident in the post-World War II era: the electorate chose to use a voting strategy that resulted in electing a presidential candidate of one political party and a congressional candidate of the opposition party. This strategy of splitting the ballot between the two major political parties of the United States came to be known as *split-ticket voting*. This phenomenon is seen as one of the main causes of the occurrence of divided government, being a common practice among the moderate electorate; it can also be explained by the expansion of 'candidate centered' electoral strategies, helped by increased media coverage, as well as by the declining party-loyalty of the electorate.

*United, or unified government*, is the term used to define the situation when one party controls both Congress and the presidency while the other party is in opposition. Unified government was the norm of the pre-World War II era and the exception of the post-World War II era. President George W. Bush enjoyed unified government during his first five months in office as well as during four consecutive years, between the 2002 and the 2006 midterm elections.

The mechanism stipulated by the U.S. Constitution giving each branch of government some control and influence over the other branches is known as the mechanism of *checks and balances*. The separation of powers is a basic principle of any functional democracy, and it can be viewed as the basic principle in the Constitution of the United States as well. It divides the political power among the three branches of the government. That means that the legislative branch, the executive branch and the judicial branch of the national government cannot acquire absolute power detrimental to the other two branches. In order to further safeguard this principle, the Constitution's Framers established the mechanism of reciprocal control, or checks and balances, resulting in a power sharing system where all the three branches get attributes pertaining to the legislative, the executive and the judicial authority. Congress passes the legislation necessary for governing the country, which is the core of the governing process, being at the same time closest to the people (election and territory representation). In order to bring balance to the branches of the government, the Constitution stipulates that the president has the power to veto any legislation, therefore reducing the power of Congress. Congress passes legislation, the president has the power to veto it, or he can sign it, but the final decision, whether a specific law is constitutional or not, lies with the Supreme Court. The Supreme Court of Justice has the authority of Judicial Review, and it can rule acts of Congress as being unconstitutional if necessary.

The rules which govern the functioning of the Senate allow a minority fraction to hold the floor indefinitely in order to delay and even kill the matter under consideration. This is a

strategy of preventing a bill or an amendment from coming to a vote (filibuster). **Cloture** is the procedure allowing a majority of three-fifths of Senators, that is 60 out of 100 Senators, to vote for imposing a time limit on a debate, and it is used in the Senate to overcome a filibuster. The main activity of Congress is passing legislation; at the same time, both the House of Representatives and the Senate are empowered to conduct investigations and hearings, aimed at controlling and supervising the activity of the executive agencies. **Congressional oversight** of the executive is part of the mechanism of checks and balances, and contributes to ensure the stability of the American democracy. The intensity of congressional oversight during the George W. Bush administration varied considerably in synchronism with the party controlling Congress: the Republican-controlled Congress (2002-2006) was less active in performing investigations of the Republican-controlled executive, while the Democrat-controlled Congress was much more active in this respect and intensified its oversight of the executive on a wide range of issues, especially the wars in Afghanistan and Iraq.

In times of divided government the conflict between the president and the opposition controlled Congress can sometimes lead to a deadlock situation, or stalemate, if neither side is willing to compromise and agree on the piece of legislation in dispute. Nowadays this situation is known as **policy gridlock**. It can paralyze the ability of the government to produce the necessary legislation and may even result in a complete cease of governmental activity, as in 1995, during the budget confrontation between President Clinton and the Republican-controlled Congress. The gridlock was solved after two months, when Congress backed off because the public opinion took the president's side. This type of situations might be exacerbated in election years, as neither the White House nor the opposition-controlled Congress has the incentive to give credibility to the opposing party in promoting successful legislation.

President George W. Bush has repeatedly avoided direct confrontation with Congress by signing bills into laws and thereafter issuing a statement, a **signing statement** giving his interpretation of the law, declaring that some of the provisions of the law need not be obeyed by the executive agencies. Presidents have used signing statements to modify the meaning of a law passed by Congress according to their interpretation of the Constitution, but no other president has used this strategy as much as President George W. Bush who issued more signing statements than all the other presidents in the history of the United States. He was criticized for his extensive use of signing statements in order to unilaterally alter legislation, but this practice was never challenged either by Congress or by the courts of law. The American Bar Association stated in a report released on July 24, 2006, that the Constitution



does not grant the president this right; a president should either sanction a bill or use his veto pen and return it to Congress where his veto can be overridden.

## **1.6 Structure of the Thesis**

This thesis contains six chapters organized in a manner relevant for the logic of the argument.

Chapter 2 presents the fundamental scholarly literature relevant for this study. The discussion starts with general considerations on divided versus unified government, followed by a presentation of the classic point of view that unified government is more productive concerning major legislation and that divided government often results in gridlock and lacks efficiency. Alternative points of view, maintaining that divided government is as productive as unified government with respect to significant legislation are introduced. The chapter develops and presents more recent studies arguing not only that divided government manages the economy better, but also that the enacted legislation is more stable because of bipartisan support. Finally some literature relevant to the George W. Bush presidency is examined.

Chapter 3 presents the inventory of significant legislation selected according to Mayhew's method. The collected data is examined, and the legislative productivity is analyzed as a function of conditions of party control; the general hypothesis is therefore put to test. Part of the discussion follows President George W. Bush's working relationship with Congress; the presidential signing statements as well as the presidential vetoes are introduced in the discussion. A separate inventory of vetoed legislation is also established and analyzed in detail.

Chapter 4 focuses on domestic policy and trade. It analyzes and discusses the governmental activity and the legislation enacted during unified governments compared to that enacted during divided governments. The presidential agenda and the response of Congress to the president's requests are presented. This chapter also investigates the level of cooperation and the level of conflict taking into account the conditions of party control. The impact of the crisis factor on domestic policy is examined as well.

Chapter 5 analyzes the governmental activity with respect to national security. The impact of the 9/11 terrorist attacks on the American political life and the influence of these tragic events on the congressional activity are emphasized from the very beginning. President Bush's decision to launch military operations in Afghanistan and Iraq had major implications on the subsequent activity of the government. The war on two fronts is discussed even though the focus is on the way this key factor affected governmental activities. This chapter reveals

the cooperation, and sometimes the conflicts, in connection with policy addressing national security issues.

Chapter 6 summarizes and interconnects the findings and the different points of view set forth in the previous chapters, bringing together the logical arguments to a final conclusion on the hypothesis and the larger questions formulated in the beginning of the study. The concluding discussion is centered on the differences found between divided and unified governments in terms of significant legislation enacted during the George W. Bush presidency. The conflict and the cooperation between President George W. Bush and the U.S. Congress are discussed with respect to conditions of party control. A historical perspective on the legacy of the George W. Bush presidency concludes the discussion.

## **CHAPTER 2: SCHOLARLY LITERATURE**

### **2.1 Introduction**

This chapter examines the ideas and the opinions of top political science scholars with respect to the advantages and the disadvantages of divided party control in terms of legislation and legislation output, presidential strategies in dealing with Congress and legislative gridlock. The causes and the consequences of divided government have been extensively studied by political scientists, therefore a brief résumé of the scholarly literature is presented in this chapter. In contrast with enacted legislation, vetoed legislation does not require a process of selection due to its restricted volume. It will be presented and analyzed in this study because it reveals the level of conflict between the president and Congress, which is the ultimate expression of legislative gridlock.

People of our generation have witnessed a series of remarkable events that changed the face of Europe in a very short time span: Between 1989 and 1991 the whole communist system in Eastern Europe crumbled like a castle of playing cards. The dictatorial communist system based on one-party control of the country was rejected by millions of people in favor of a pluralist democratic society, completely opposed to the one-party control system, while the United States has enjoyed an uninterrupted stability of its political system due to the design of its Constitution, adopted more than two hundred years ago. The fundamental principle of the separation of powers was interlaced with the mechanisms of checks and balances, and the result was the flexible, adaptable and durable Constitution that stood the test of time. Among the three branches, Congress logically has a dominant position and the biggest power because it passes the legislation necessary for governing the country, which is the core of the governing process, while at the same time remaining closest to the people (election and territory representation). However, the President has the constitutional right to veto any legislation, while Congress has the power to override the presidential veto with a two-thirds majority in both the House of Representatives and the Senate.

The basic principle of separation of powers, as well as the American electoral system, lead to a fluid, dynamic situation in the American government, known as divided government, when one political party is in control of the presidency and the opposition party controls one or both chambers of Congress. This phenomenon in American politics has caught the attention of the political scientists and has been extensively studied by these scholars; a great number of books, studies and articles have been published on the subject of divided versus unified governments, focusing on the electoral causes and on the consequences.

Subchapter 2.2 introduces a few general considerations on divided government as reflected in the political science literature. This will be followed by a discussion of the causes of the increasing occurrence of divided government in modern times in subchapter 2.3. The scholarly opinions of the consequences of divided government are divided into three groups that will be explored in detail in subchapter 2.4. Political scientists' opinions are presented in three subsequent subchapters:

2.4.1 Unified government is more efficient in passing legislation and divided government often results in gridlock.

2.4.2 Divided government is as productive as unified government in passing legislation.

2.4.3 Divided government adopts legislation with bipartisan support and manages the economy better while unified government often results in bigger budget deficits.

This chapter will come to a conclusion showing what relevance these theories have in understanding the evolution of the American government under George W. Bush's administration that unfolded under both unified and divided governments.

## **2.2 General Considerations on Divided versus Unified Government**

Political scientists agree that divided government has become the norm of the post-war era: Between 1946 and 2008, nineteen of the thirty one Congresses have been under divided party control. Kernell and Jacobson (2006, p.28) state that unified party control has been a feature of the American political life in the 20<sup>th</sup> century until World War II, with only three exceptions. After the war things have changed and "unified party control has been the exception rather the rule."

Conley (2003, p.3) underlines the importance of studying divided party control of the government since "it has occurred just six out of every ten years since 1946." In fact ten years between 1981 and 1991 represented an uninterrupted record for divided-party control, when Congress was controlled by the Democrats under a Republican president, followed by two years of united government during the first two years of the Clinton administration (1992-1994). The midterm elections of 1994 restored divided government as the Republicans took control of Congress. In the opinion of Fiorina (1996, p.135) it was the public preferences that tilted the balance back to divided government after only two years of unified-party control, restoring the era of divided government.

Cox and Kernell (1991, p.2) examine in detail the shock that followed the midterm elections of 1946, when the Republicans took control of Congress during Harry Truman's presidency.

They also describe the politicians' reaction to this divided-government situation after fourteen years of uninterrupted unified-party control: Democratic Senator J. W. Fulbright even held the opinion that the government would look like a "big helpless giant that is unable to make up its mind, unable to function."

### **2.3 Causes of Divided Government**

The modern phenomenon of the growth in the incidence of divided government prompts the obvious question: Why has it occurred and why does the American electorate still opt for this form of government? Political scientists have tried to answer this question and reveal the roots of divided government and its electoral origins. Fiorina (1996, p.8) finds one possible cause in troubled times of economic, social or political crises, "those times identified by political historians as periods of chronic societal strain." For example, the great crash of 1929-1933 triggered divided-party control in 1930 when the Republicans lost control over the House; the Democrats lost control over both chambers of Congress at the end of World War I in 1918 and at the end of World War II in 1946. In 1954 the Republicans again lost their control of Congress following the armistice in the Korean War.

Scholars also track split-ticket voting as a likely cause for divided government. Fiorina (1996, p.13) focuses on the increase of split-ticket voting in the 20<sup>th</sup> century, especially between 1965 and 1975, coinciding with the Vietnam War, and he underlines the fact that split-ticket voting seems to favor Republican presidents and Democrat-controlled Congresses. In fact, between 1928 and 1994, during 66 years and 33 Congresses, the House has been under Democratic control 30 times and under Republican control only three times. (Kernel and Jacobson 2006, p.282) Analyzing the electoral origins of divided government, Jacobson (1990, p.5) emphasizes the "Democratic dominance" of Congress, especially of the House, as a source of divided government. This dominance lasted until the Republican landslide congressional victory of 1994. He pointed out that "Since 1956 six of nine presidential elections have delivered split verdicts, all, of course coinciding with Republican presidential victories."

Jacobson (1990, p.2) sees the Republicans' lack of success in the House elections, not as a structural flaw of the electoral process, but as a logical outcome resulting from the political decisions made by the electorate. Structural explanations for the Democratic dominance in the House of Representatives, like gerrymandering and the growing advantages conferred by incumbency, advocated by a number of Republican leaders, have been recognized as substantial, but by no means the only possible cause of the Democratic

advantage in the House. Fiorina (1996, p.21) dismisses, in his turn, gerrymandering as a cause for the Democratic dominance of the House and a possible explanation of divided government, arguing that “on the whole, incumbency appears to offer a plausible explanation for the current condition of divided national control.” Nonetheless, the advantage of incumbency, though real, cannot explain why the Democrat candidates win more of the open seats in congressional elections. This point of view is shared by Jacobson (1990). Moreover, Jacobson (1990, p.3) argues that “the roots of divided government are not structural, but political,” and that ultimately, “divided government reflects voters’ preferences.” (Jacobson 1990, p.119) It is the voters who decide to cast their ballots that way: Democrat representatives are elected to keep a Republican president in check. (Jacobson 1990, p.105)

In general, the House is seen as being closer to the electorate and to their everyday problems. The Democrats have embraced social and economic policies aimed to address local, specific issues; therefore the electorate sees the Democrat candidate better fit to represent their interests in the House. On the other hand, the Republicans are considered to be more concerned with issues pertaining to national interests and to national security, therefore the electorate sees the Republican candidate better fit to deal with broader national issues. People have different expectations “of presidents and congressmen, as well as of Republicans and Democrats.” (Jacobson 1990, p.106)

Brady (1993, p.189) agrees that we should identify separate electorate levels and “that voters decide on different criteria, depending on the office being contested.” In the light of the electorate level theory, we can also mention Petrocik (1991, pp. 20-21) theory of “issue ownership” that attempts to explain the Republicans’ success in presidential elections by campaigning on issues like fighting crime, taxation, foreign policy, defense and national security that are perceived by the public as the Republican stronghold. In the same way the Democrats are seen as owning social issues, like welfare, social security and public education, while economic issues have a mixed ownership. It is interesting to note that in 2000 George W. Bush campaigned not only on tax reduction, a traditional GOP theme, but also on issues favored by the Democrats, like education and social security, under the general philosophy of compassionate conservatism.

Split-ticket voting, the fact that the electorate vote and show their preferences for Republican presidents and Democratic representatives, shows that loyalty to a political party has no longer played a decisive role in recent times, a general phenomenon underlined by Jacobson (1990, p.2) who investigates “the thorough partisan disintegration of electoral politics over the last forty years” as a main political cause of divided government. The same

point of view is shared by Fiorina (1996, p.44) who considers the decline of party loyalty an obvious explanation of voters splitting their tickets. Still, he sees party decline as a “precondition rather than an explanation,” because other factors come into the overall picture as the party loyalty disintegrates. In the end, issues important to voters overcome party loyalties, as they did in the politics of the post-World War II era, contributing to the increased occurrence of divided government.

Jacobson (1990, p.134) foresees a future for divided government as “Democratic Congresses and Republican presidencies reinforce one another. ... at the same time, people may feel more comfortable voting for a Republican President knowing that the Democrats in Congress will keep him from gutting their favorite programs ...” This argument leads us to what Fiorina (1996, pp. 64-72) calls the “balancing” theory of divided government. Voters, especially the moderate ticket-splitters, often vote for a Republican presidential candidate to balance a Congress that is perceived as too “leftist” and bring the policy-making process closer to their personal ideal views. Alesina and Rosenthal (1995, p.5) explain both divided government and midterm election results (when the president’s party usually loses seats in Congress) as “phenomena of institutional balancing.” According to the two political scientists from Harvard, moderate voters can mandate the presidency to one party and Congress to the opposing party with the intentional effort to magnify the constitutional mechanisms of checks and balances, achieve balance, and impose a moderate “middle-of-the-road” public policy process. Thus, divided government “is not an accident, but the result of the voters’ desire for policy moderation.” (Alesina and Rosenthal 1995, p.2)

Fiorina (1996, p.68) advances yet another possible explanation of the decline in Republican strength in the House: As Congress becomes more and more a professional institution, full-time careers appeal more to Democratic candidates than to the Republicans, because the latter have more attractive opportunities in business and in private practice. Fiorina’s argument about the “salutary effects of two-party competition and the cleansing properties of party alternation in office” is relevant for the now normal midterm elections outcome, when the party of the president loses seats in Congress. The classical pattern of the Republican president having to deal with a Democratic Congress, especially a Democratic House of Representatives, has been interrupted by the outcome of the 1992 elections. The irony is that much of this discussion about the Democratic advantage for congressional election and their dominance of the House of Representatives (40 years between and 1954-1994) ended with the Republican revolution and capture of Congress in the 1994 midterm elections.

President Clinton governed with a Democrat-controlled Congress for only two years, only to reinforce the normal pattern of the midterm election outcome in 1994, which reinstated a divided government, this time with a Democrat president and a Republican-controlled Congress (Fiorina 1996, p.139). The Republicans won control of the House of Representatives for the first time in forty years. Fiorina (1996, p.142) concluded that “divided government will continue to be frequent, but it will occur in a richer variety of patterns of control than the Republican President/Democratic Congress pattern of the past generation.” The theories presented in this subchapter were published before the turn of the 21<sup>st</sup> century, triggered by several decades of divided government dominance in the American political life, and they provide the matrix that will guide our analysis of the 2006 elections and subsequent political developments during the divided government of 2007.

## **2.4 Consequences of Divided Government: Divided Opinions about Divided Government**

The political scientists’ opinions on divided government are polarized due to the different conclusions drawn from their assessments of the consequences of divided government for American politics. One side of the polemic argues that divided government has negative consequences and that unified government functions better and is more efficient. The other side of the polemic argues that divided government has positive consequences, adopts legislation with bipartisan support and better manages the economy, while unified government often results in bigger budget deficits. Using the quantitative empirical method, and comparing the legislative output of both divided and united governments, Mayhew (1991) placed his theory at the center of the dispute. He demonstrated that there are no major differences with respect to the number of significant laws enacted under divided versus unified party control of the government. Due to the relevance of these theories for the present study, these fundamental directions in the scholarly literature assessing the consequences of divided government are presented in the following three separate subchapters.

### **2.4.1. Negative Consequences of Divided Government**

Divided government has a multitude of consequences, and the political studies focused at first on its dysfunctions and its less desired consequences for the American political life. Sundquist (1988) compares divided government with unified government and underlines the mechanisms which lie behind the successful policy-making process. He argues that in times of unified government the presidency, the Senate and the House of Representatives, all three controlled by the same political party, have a strong incentive to reach an agreement and pass



legislation according to their political program. In this way they keep their electoral promises and lay the foundations for the next electoral battle. Sundquist (1988, p.629) studies the case of the divided government which he calls “coalition government,” highlighting its dysfunctions when the opposing parties are forced into a difficult and strenuous collaboration “leading frequently to deadlock, inadequate and ineffective policies, or no policies at all.” Competition grows out of control, often degenerating in confrontation and open conflict between the president on one side, and Congress on the other.

Coleman (1999, p.821, 827) supports Sundquist’s argument on the advantages of unified government and concludes that “unified government helps pass policy” that require a “strong partisan majority,” while legislation that requires bipartisan support can be enacted during both united and divided party control of the government. Sundquist’s arguments, especially his theory about the inefficiency of divided government, have been adopted by other scholars as well, such as Binder (1999), Kernell (1991 and 2006), and became the dominant conventional view on the negative aspects of divided government. Binder (1999, p.527) develops and reinforces Sundquist’s argument about divided government as the source of government paralysis and political deadlock, or legislative gridlock as she calls it. She concludes that “divided governments are prone to higher level of gridlock.”

Gridlock and stalemate are in fact direct consequences of the American Constitution that stipulates that the president has the power to veto and reject legislation passed by Congress in his struggle to influence the political process according to his preferences and his political views. The veto power was, and it is still, used by the American presidents in times of divided government, having become “the weapon of the minority administration,” (Kernell, 1991, p.100) to check on the opposition-controlled Congress. In Kernell’s opinion (1991, p.102), vetoes can be more easily associated with electoral strategies than with effectual differences in the fundamental positions regarding public-policy issues. In fact, the continuous electoral campaigning of the two political parties generates the imperative to discredit the merits of the opposing party, especially when the two parties control different branches of the government, a most striking feature of the American political life.

Tenpas (2006) analyzes the George W. Bush presidency between 2001 and 2006 and shows that the president has used other means to influence the content of legislation, making use of signing statements and frequent veto threats. Kelley and Marshall (2008) study presidential strategies in dealing with Congress, especially the veto threats and the signing statements. President George W. Bush was criticized for his extensive use of signing

statements by Ornstein and Mann (2006) and by the American Bar Association. (American Bar Association, 2006)

#### **2.4.2 Divided Government Is as Productive as Unified Government**

The conventional wisdom that divided government is inefficient and more often than not results in legislative gridlock was challenged by Mayhew in 1991. He demonstrates that unified and divided governments have the same output with respect to the enactment of important legislation. *Divided We Govern* became a landmark contribution in the field of governmental studies; Mayhew (1991) demonstrates his theory using quantitative analysis to establish a comprehensive inventory of important legislation enacted between 1946 and 1990. The obvious question that arises is how he decided whether a law was important or not. His idea was to use third-party referees. First he used contemporary judgments on each session of Congress in what he calls “Sweep One,” that is annual end of session wrap-up articles published in the *New York Times* and the *Washington Post*. Then he built up “Sweep Two,” which is a retrospective assessment of the importance of enacted legislation judged by their long-term effects. In this way he validates 147 out of 211 enactments identified in “Sweep One.”

Mayhew’s quantitative methods have left some questions unanswered, and these questions led to a series of complementary studies aimed at enlarging the analysis of divided versus unified government. His focus on the output of enacted legislation was challenged by Edwards, Barrett, and Peake (1997, p.550) who analyzed the potentially significant bills that failed to be enacted into laws, and concluded that this situation is more frequently encountered during times of divided government. Nevertheless, they used Mayhew’s inventory of important legislation that had been enacted between 1946 and 1991 as a starting point, and his criteria for deciding “the potential significance of legislation that did not pass.”

The proportion of the public-policy issues on the legislative agenda that fails to be enacted is further studied by Binder (1999, p.527) who also scrutinized rejected legislation and reached the conclusion that a gridlock score is higher “when the two major parties split control of Congress” and that “focusing solely on what is enacted rather than on the agenda facing Congress, risks understating the effects of divided government” (Binder 1999, p.529). The conflict between the two major parties inherent to divided government was analyzed by Rose (2001), who found that the tensions manifested during divided government are spilled over towards the president’s party. The party in control of Congress exploits the divisions

between the factions already existing in the president's party, enlarging the potential intraparty conflict for electoral and political gain.

### **2.4.3. Benefits of Divided Government**

Even though divided government is occasionally plagued by legislative gridlock, the government's electoral mandate is to find the middle ground and to implement moderate public policies across party lines. From this point of view, gridlock is just the failure to respond to the electorate mandate; it is the failure to find the middle ground. As the frequency of divided government after World War II clearly shows, the voters favor divided government and moderation (Alesina and Rosenthal, 1995) (Niskanen, 2003). Not only the electorate seems to favor divided government, but there are political scientists, such as William A. Niskanen, Thomas E. Mann, and Stephen Slivinski, who see the beneficial effects deriving from a better balanced government. These scholars, representing prestigious think-tanks institutes like Cato and Brookings, voiced their dismay at the excesses of the unified Republican government between 2003 and 2006, at their spending spree resulting in huge budget deficits, deploring the lack of proper congressional oversight of the executive activities and looking forward to a divided government that would bring balance back to Washington.

The scholars' and the voters' concerns alike were expressed in the media before the midterm elections of 2006, as the Republican-controlled Congress was criticized for apathy, subservient and servile attitude towards the presidency, and abuses of the legislative procedures (Ornstein and Mann, 2006). Ornstein and Mann (2007) considered that the Republican-controlled Congress (the 109<sup>th</sup> Congress) became dysfunctional, it became "the broken branch" of the government; it did not fulfill its oversight duties in a responsible way and did not act in the spirit of the American Constitution, as a separate branch of the government that should be independent of the presidency and act accordingly. It is ironic that it was a branch of a unified government that was given the name "the broken branch."

Even before the Republican unified government blew up the budget deficit of the United States to unheard of limits, the chairman of the libertarian Cato Institute, William A. Niskanen (2003), assessed the benefits of divided government when each party can reject the extreme measures proposed by the other party, and demonstrated that "the rate of growth of real (inflation-adjusted) federal spending is usually lower with divided government." He argues that legislation adopted with bipartisan support during a divided government has better chances of survival if Congress changes hands. Last, but not least, he draws our attention on the fact that major military conflicts are less likely to occur in times of divided government.

Each of the four major American wars in the 20<sup>th</sup> century, for example, was initiated by a Democratic president with the approval of a Congress controlled by Democrats. The war in Iraq, initiated by a Republican president with the support of a Republican Congress, is consistent with this pattern ... (Niskanen, 2003)

Stephen Slivinski (2006), former director of budget studies at the Cato Institute, has similar views on the positive effect of divided government on the economy as a Democrat-controlled Congress will put the brakes on the runaway budget deficit and act as an extra layer of checks and balances.

## **2.5 Conclusion**

The brief review of the scholarly literature, devoted to establishing a comprehensive picture of the causes and the consequences of unified and divided governments, creates the framework for our own study of the American government during the George W. Bush administration. Since this presidency unfolded both under divided and unified party control of the government, it is important to determine what made the Americans vote one way or the other.

The midterm elections of 2002 were under the spell of the traumatic events of September 11, 2001, and the electorate chose a Republican-controlled Congress to support and sustain the Republican president in the War on Terror. When the War on Terror was in full development, the voters renewed President Bush's mandate in 2004. The 2006 midterm elections outcome and the landslide victory of the Democrats can be clearly correlated with the downturn in the American economy and with the voters' discontent with the administration and the war in Iraq. The wish of the electorate to reestablish balance and moderation in the American political life resulted in party alternation in Congress.

Even though the American economy was undoubtedly affected by the huge defense spending related to the wars in Afghanistan and Iraq, one can easily argue, as the scientists from the Cato Institute did, that the situation was made worse by having one party in control of the government. There was too much deference and no actual opposition to the disastrous combination of tax cuts and sky-high defense budget. As soon as the Democrats took over Congress, the dynamics of the political life in Washington changed dramatically. The congressional hearings invigorated, and the opposition to the current administration materialized in a number of bills bound to be vetoed by the president, who suddenly discovered his veto pen. The resulting stalemate was not as dramatic as shutting down the government, but it was a considerable change from the veto-free presidency of the previous years.

The scholarly literature provides the methodology background of this study. Political scientists have used different methods to assess the efficiency of the federal governments and to measure the legislative output. This study follows Mayhew's methodology and identifies the significant legislation enacted from 2001 to 2007. Thus it will be possible to compare the governmental activity in times of unified versus divided party control.

In the following chapters we will make further use of the scholarly literature in order to uncover the mechanisms at work in passing legislation pertaining to domestic and national security policy areas. The strategies used by George W. Bush when supported by the Republican-controlled Congress, or faced with a Democrat-controlled Congress that opposed him on more than one occasion, will also be discussed. The theories of the respected political scientists reviewed in this chapter allow us to study George W. Bush's presidency from a multidimensional perspective adding structure and depth to the analysis of this presidency that can easily be oversimplified by the terrorist attacks of September 11, 2001, and the subsequent military conflicts of the first years of the new millennium.

## CHAPTER 3: DATA COLLECTION AND ANALYSIS

### 3.1 Introduction

This chapter presents and analyzes the data collected by using the methodology devised and developed by David R. Mayhew in 1991. The end of the year articles wrapping up the congressional activity for each session between 2001 and 2007 published in the *New York Times* and the *Washington Post* are used to gather the laws for the significant legislation inventory. The next step is to corroborate the laws selected by political commentators as being significant with key legislation identified by *Congressional Quarterly Almanac Plus* for each year. This study relies on the experienced judgments made by the political commentators in two newspapers of record in order to select what legislation is important from the multitude of the bills enacted into laws each year. However, this study does not rely exclusively on these judgments, and the data collected is corroborated with the selection made by another specialized and experienced publication, the *Congressional Quarterly Almanac Plus*.

The inventory of major legislation for each congressional session is displayed in subchapter 3.2. For convenience, Tables 2, 3 and 4 are displayed in Appendix 1. This subchapter also shows the composition of Congress by political party between 2001 and 2007, the way Congress membership changed over time, and the way it influenced the legislative process. Subchapter 3.3 contains a comparative analysis of the evolution of the legislative output during divided and unified governments. President Bush's unilateral actions aiming at the expansion of presidential power are discussed in subchapter 3.4. The use of signing statements as a presidential strategy during unified and divided governments and the use of presidential vetoes are analyzed as well. The level of conflict and cooperation between President George W. Bush and Congress is also evaluated, by studying his strategies in dealing with Congress and the lawmakers' strategies in response to the presidential maneuvers. Vetoed legislation is analyzed in detail in subchapter 3.5 and conclusions are drawn in subchapter 3.6.

The inventory of significant legislation enacted for the 2001-2007 time span does not contain appropriation bills, as financial resources must be provided one way or another for funding different governmental agencies. Nonetheless, some supplemental appropriation bills are included because they contain important or controversial provisions considered relevant by the political analysts and therefore relevant for this study. The inventory does not include short-term extensions of the validity of older laws. In some cases the name of the law does not indicate the substance of the law; therefore the generic names used in the media have been

added in brackets. Laws comprising several significant provisions (omnibus bills) are counted as one, even though they are sometimes discussed separately by the press. Appropriation bills are not part of the inventory of significant laws, but they are discussed separately if they were vetoed by the president, being relevant for the level of conflict between President George W. Bush and Congress.

### **3.2 Data Collection**

The body of significant laws for 2001-2007 is compiled year by year for each session of Congress. In this way we can better analyze 2001, a year when the legislative activity unfolded under both united and divided governments. In the same way the year 2007 had to be dealt with individually, as the rest of the legislative activity of the 110<sup>th</sup> Congress took place after the completion of the data collection for the present study.

#### **3.2.1 The 107<sup>th</sup> Congress (2001-2002)**

The 107<sup>th</sup> Congress was evenly divided between Republicans and Democrats and the legislative process was influenced accordingly. In the Senate, the seats were distributed 50-50, with Vice-President Dick Cheney breaking the tie. In the House, Republicans held a narrow majority: 222 Republicans versus 211 Democrats with 2 independents caucusing one with each party. Congress started its activity under Republican control. However, after Senator James Jeffords left the Republican Party on May 24, 2001 to become an independent aligned with the Democrats, the balance of power in the Senate was tilted in favor of the Democrats. Until the end of May, when Senator Jeffords defected, President George W. Bush had had the benefit of a Republican-controlled Congress that concentrated its efforts on passing legislation on his favorite issue, tax reductions. The second half of the year was marred by the September 11 attacks, and even though President George W. Bush had to deal with a Democrat-controlled Senate, the shock of the terrorist attacks wiped away many partisan differences on Capitol Hill, if only for a while. The political agenda of the American government was reshaped as national security issues became the first priority, while the Democrats' favorite issues such as reforming campaign finance and a patients' rights bill were set aside.

**Table 1**

Significant legislation enacted during the 107<sup>th</sup> Congress.

Nr.	Cleared for White House	Code	Party Control <sup>1</sup>	Name of the Law
1	May 26 2001	PL107-016	U	Economic Growth and Tax Relief Reconciliation Act of 2001 (Tax cuts)
2	Sept.14 2001	PL107-038	D	Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States
3	Sept.14 2001	PL107-040	D	Authorization for Use of Military Force (Afghanistan)
4	Sept.2 2001	PL107-042	D	Air Transportation Safety and System Stabilization Act
5	Oct. 25 2001	PL107-056	D	USA PATRIOT Act of 2001
6	Nov. 16 2001	PL107-071	D	Aviation and Transportation Security Act
7	Dec. 18 2001	PL107-110	D	No Child Left Behind Act of 2001
8	Mar. 20 2002	PL107-155	D	Bipartisan Campaign Reform Act of 2002
9	May 10 2002	PL107-171	D	Farm Security and Rural Investment Act of 2002
10	Jul. 25 2002	PL107-204	D	Sarbanes-Oxley Act of 2002 (Corporate Responsibility Act)
11	Aug. 1 2002	PL107-210	D	Trade Act of 2002 (Fast-Track Trade Authority)
12	Oct. 11 2002	PL107-243	D	Authorization for Use of Military Force Against Iraq Resolution of 2002
13	Oct. 16 2002	PL107-252	D	Help America Vote Act of 2002 (Electoral Reform)
14	Nov. 15 2002	PL107-306	D	Intelligence Authorization Act for Fiscal Year 2003 (The Independent 9/11 Commission )
15	Nov. 19 2002	PL107-297	D	Terrorism Risk Insurance Act of 2002
16	Nov. 22 2002	PL107-296	D	Homeland Security Act of 2002

**Source:** Thomas, legislative information from the Library of Congress, <http://www.thomas.gov/>

For 2001 political commentators identified seven significant laws pertaining to both domestic policy and national security, laws that will be discussed and put into the appropriate context in Chapter 4: Domestic Policy and Trade, and in Chapter 5: National Security. During the first

<sup>1</sup> Divided government is marked by D, while unified government is marked by U.



half of the year, Congress passed only one significant law, the Economic Growth and Tax Relief Reconciliation Act of 2001. Between September and the end of the year, six major bills were enacted - five pertaining to national security and one materializing another favorite issue of the president, the education reform (the No Child Left Behind Act of 2001). Thus, a total of seven significant bills were enacted into law during the first session of the 107<sup>th</sup> Congress.

In 2002, the 107<sup>th</sup> Congress passed four bills that were deemed necessary following the 9/11 attacks, four important bills pertaining to domestic policy and one addressing trade. Thus nine major bills were enacted into law in the second session of the 107<sup>th</sup> Congress. Table 1 shows all the laws identified as significant for both sessions of this Congress. For the remaining years (2003-2007), the significant legislation passed by the 108<sup>th</sup>, 109<sup>th</sup> and 110<sup>th</sup> Congress is presented in Appendix 1.

### **3.2.2 The 108<sup>th</sup> Congress (2003-2004)**

After the 2002 midterm elections, the balance of power in Congress shifted again, as the GOP made gains in both the Senate and the House. In the Senate, Republicans had 51 seats while Democrats had 48 seats and one independent caucusing with them. In the House, Republicans increased their lead to 227, while Democrats had only 205 seats and one independent aligned with them. There were also two vacancies. The GOP had a small but clear majority in the 108<sup>th</sup> Congress, and the US government was again under unified party control. Nevertheless, partisanship and conflict characterized the first session of this Congress. Important bills, such as the annual appropriations bills, could not be finalized before the end of the year, while the comprehensive energy bill was blocked in the Senate by filibuster action. (*Congressional Quarterly Almanac 2003*, p.1.3) The partisan atmosphere of 2003 was perpetuated in 2004, and the vote studies in *Congressional Quarterly Almanac 2004* show that 2003 and 2004 were the most partisan years in five decades of vote study records. (*Congressional Quarterly Almanac 2004*, p.B.8) The second session was marked by intraparty disputes in the GOP. Actually, due to their internal disagreements, the Republicans did not manage to agree on the budget resolution for 2005. (*Congressional Quarterly Almanac 2004*, p.1.3)

The approaching presidential and congressional elections of 2004, as well as the electoral campaign, were prioritized over congressional activity, and local partisan activism was prioritized over bipartisanship and cooperation. The lawmakers' focus was on the electoral agenda and not on the congressional agenda. The first session of the 108<sup>th</sup> Congress (2003) resulted in five major laws and during the second session (2004) Congress passed

another five major laws. Table 2 (Appendix 1) shows all the laws identified as significant for both sessions of this Congress.

### **3.2.3 The 109<sup>th</sup> Congress (2005-2006)**

George W. Bush won a second term following the 2004 elections, and the GOP gained more seats in both the House and the Senate. The composition of the 109<sup>th</sup> Congress showed a comfortable Republican lead in the Senate, 55 Republicans versus 44 Democrats and 1 independent aligned with them. In the House, the Republicans had 230 seats and the Democrats had 202 seats plus 1 seat independent aligned with them. There were also 2 vacancies in the House. Special open primary elections resulted in the victory of one Democrat and one Republican filling the vacancies. As a result, the balance of power in the House was not affected. (Congressional Research Service, 2005)

As a consequence of the Republican victory in the elections and their increased majority in both chambers of Congress, the first session of the 109<sup>th</sup> Congress started by dealing with unfinished business. Congress passed legislation that had not been finalized by the previous Congress. Six pieces of legislation, four pertaining to the domestic policy area, one to national security and one to trade and foreign policy area were identified, one of them being a rider. The amendment sponsored by Republican Senator John McCain stipulated a ban on torture or inhuman treatment of detainees, and it was attached to the Department of Defense Appropriations Act, 2006. This study has excluded appropriation bills from the list of significant legislation, but the amendment was deemed to be of principal importance both by the *New York Times* and the *Washington Post*, and by the *Congressional Quarterly Almanac Plus* (2005), therefore it was included in the inventory of significant legislation for 2005.

The second session of the 109<sup>th</sup> Congress was marked by serious Republican intraparty divisions, as opposed to the unusual degree of unity among Democrats. Democrats united their ranks both in the House and in the Senate while the Republican consensus weakened even before the end of 2005. In the context of the approaching midterm elections, many Republican lawmakers wanted to put some distance between themselves and President George W. Bush, due to his growing unpopularity with the American public. The situation was aggravated by the resignation of the House Majority Leader Tom DeLay who was forced to step down from his position, because he was under investigation for alleged campaign finance violations. His successor, John A. Boehner, did not manage to keep the same degree of cohesion among the House Republicans. Moreover, the approaching electoral campaign divided Republicans even further as they tried to promote the special needs of their

constituencies. Wide rifts between the House and the Senate Republicans proved to be a major obstacle in passing significant legislation. Even the basic congressional function of adopting the budget resolution and passing regular appropriation bills was disrupted by Republican intraparty conflicts. (*Congressional Quarterly Almanac 2006*, p.1-5)

The Democrats considered this session to be one of the least productive in modern times and called the 109<sup>th</sup> Congress the “do-nothing Congress” (Nather, 2006). In spite of this label, six significant pieces of legislation were passed during the second session, bringing the total number of major laws for the 109<sup>th</sup> Congress to twelve, as shown in Table 3 (Appendix 1). However, David Nather, a Congressional Quarterly specialist in the political overview of Congress, considers this congressional record “thin” and that it does not carry much weight compared with previous Congresses. (Nather, 2006) It is important to specify that the energy bill allowing offshore drilling for oil and gas in the Gulf of Mexico was passed as part of a “compendium of last minute priorities sent to President Bush” at the end of the year, under the name of Tax Relief and Health Care Act of 2006. (Hulse, 2006a)

### **3.2.4 The 110<sup>th</sup> Congress (2007)**

The 2006 midterm elections were clearly influenced by the scandals that damaged the image and the reputation of the Republican Party and by the growing public discontent with the war in Iraq. (Jacobson and Kernell 2008, p.2) President George W. Bush’s own job approval ratings were in constant decline, because he was strongly associated with this military conflict that became less and less popular with the American people. (See Appendix 2) Even though congressional Republicans tried to display their independence from the now-unpopular president, voters did not accept their attempt at dissociation and cast their ballots in favor of the Democrats. Thus, “the pro-Democratic national tide” (Jacobson and Kernell 2008, p.2) swept away many Republicans from Congress and put Democrats in control of Capitol Hill.

The Republicans tried without success to avoid the national issue of the war in Iraq, focusing instead on their contribution to the development of local projects in their constituencies, while Democrats promised to impose a timetable for withdrawal of the American troops in Iraq and won the elections. (Jacobson and Kernell 2008, p.4) In fact, the 2006 midterm elections were a referendum on President Bush’s policies against the Democrats’ own program “Six in ‘06” – six popular legislative initiatives presented in an electoral document under the title “A New Direction for America.” (Bash and Barret, 2006)

Democrats gained 33 seats in the House and 5 seats in the Senate. In fact, Democrats won control of the Senate because the 2 independents were aligned with them. In the House,

the Democrats had a comfortable majority, 233 Democrats - 202 Republicans. The Democrats controlled both chambers of Congress, and divided government was reinstated in Washington. Nancy Pelosi, the former minority leader in the House, became Speaker of the House, the first woman ever to occupy this high office. In his last two years in office, President George W. Bush had to face a Democrat-controlled Congress with its own political and legislative agenda. Highest on the Democratic list of priorities was the timetable for military disengagement of American troops in Iraq. However, this was easier said than done.

Even though they controlled both chambers of Congress, Democrats had serious difficulties in passing legislation that was according to their own agenda. Yet one can easily see that the weight of the congressional activity was placed on Democratic themes. Due to their eagerness to enact legislation as fast as possible during the first 100 hours of the 110<sup>th</sup> Congress, the 100-hour agenda, the Democrats pushed their program with a partisan strategy, not allowing Republicans to interfere with amendments to the bills under consideration. Thus, the Democrats alienated the Republican minority in the same way the Republicans alienated them in previous Congresses.

The sour and tense partisan atmosphere of the 109<sup>th</sup> Congress was perpetuated. Still, all of the popular measures in the “Six in ‘06” Democratic agenda were passed by the House and most of them avoided filibuster actions in the narrowly divided Senate, but that did not mean that the fight was over. The bill allowing the federal government to negotiate drug prices under Medicare was killed in the Senate. President Bush vetoed the stem cell research bill; therefore he signed into law only four of the bills included in the “Six in ‘06” electoral program.

With respect to the war in Iraq, the Democrats promised to deliver a timetable for troop withdrawal and this requirement was attached to a supplementary appropriation bill for war funding. As such, according to the Senate rules, the bill could not be subject to filibuster action in the Senate. President Bush vetoed the appropriation bill immediately, and the veto remained valid. It could not be overridden as the bill lacked the two thirds support in Congress. Nor did President Bush get the \$200 billion funding he requested for the military operations in Iraq and Afghanistan. In the end, Congress passed an appropriation bill of \$70 billion, but without a timetable for troop withdrawal attached.

In spite of partisan confrontations in the House, Republican filibuster actions in the Senate and the opposition of a Republican president, the 110<sup>th</sup> Congress was productive and passed five significant laws in the first session, even though President Bush vetoed another

seven bills in 2007. Table 4 (Appendix 1) shows the laws identified as significant for the first session of this Congress.

### 3.3. Data Analysis

Summarizing the legislative output for the time period under investigation, 2001-2007, it can be seen that the 107<sup>th</sup> Congress was by far the most productive Congress during the George W. Bush administration (See Table 5). This situation can be explained by the ripple effects of the 9/11 terrorist attacks and by the necessity for swift action to pass a series of bills vital to national security. Mayhew (2005, pp. 217-218) discusses the impact of “external events” on Congress and its legislative activity. He brings evidence for enhanced legislative activity during the Civil War, World War I and World War II, as well as the “emergency laws” passed in 1933 as part of the “New Deal” initiative. The events of September 11, 2001, had a similar effect, and triggered the enactment of five major laws pertaining to national security within two months of the events. Another four major laws related to these events were enacted in 2002. The impact of these extraordinary events clearly overwhelmed the relevance of party control regarding the legislative output.

If we separate from our inventory the emergency enactments related to national security passed as a consequence of the September 2001 terrorist attacks, we can see that only two major pieces of legislation unrelated to 9/11 were passed in 2001, one under unified and one under divided party control. We have to remember that 2001 was a special congressional year because the legislative activity took place under unified government until the end of May, and a narrowly divided government for the rest of the year. The two enactments of 2001 were part of President Bush’s campaign promises. The 2001 tax cut bill was passed at the end of May, just before Senator Jeffords’ defection, while the No Child Left Behind Act of 2001 was passed at the end of the year with bipartisan support. These major laws will be discussed in detail in Chapter 4: Domestic Policy and Trade.

Table 5

Total number of significant laws passed during each session of Congress 2001-2007.

16		10		12		5	
107 <sup>th</sup> Congress		108 <sup>th</sup> Congress		109 <sup>th</sup> Congress		110 <sup>th</sup> Congress	
2001	2002	2003	2004	2005	2006	2007	
U	D	U	U	U	U	D	
1	6	5	5	6	6	5	

Sources: Data compiled from Thomas, the Library of Congress online

Table 6

Total number of significant laws passed during each session of Congress between 2001 and 2007 after setting aside the emergency legislation enacted after the 9/11 terrorist attacks.

107 <sup>th</sup> Congress		108 <sup>th</sup> Congress		109 <sup>th</sup> Congress		110 <sup>th</sup> Congress	
2001	2002	2003	2004	2005	2006	2007	
U	D	D	U	U	U	D	
1	1	5	5	5	6	6	5

Sources: Data compiled from Thomas, the Library of Congress online

In order to have a clearer picture of the legislative activity under unified and divided governments, we have set aside from this recount five enactments in 2001 and four enactments in 2002, all related to the September 11 terrorist attacks, and the resulting situation is presented in Table 6. Thus the crisis factor is minimized and the relevance of party control is better highlighted. The significant enactments related to the 9/11 attacks will be analyzed in Chapter 5: National Security.

Obviously, after 9/11, the urgency of passing new laws necessary in the fight against terrorism took precedence over everything else and filled the congressional agenda. Therefore, only one law, The No Child Left Behind Act of 2001, was passed in the second half of the year, without being related to the 9/11 events. It had been introduced in the House and in the Senate at the end of March 2001, and much work had already been done on it during the first half of the year.

Examining the data from Table 6, we can see that the number of major enactments for each year does not differ significantly under unified and under divided governments for 2002-2007, i.e. if we set aside the emergency legislation passed after 9/11. On the average, we have identified for each session of Congress 5.5 enactments under unified governments and 5 enactments under divided governments. Moreover, examining 2001, the year of exceptional circumstances, we note that one law was enacted under unified party control and one law was enacted under divided party control, again, if we set aside the emergency legislation. These results are in line with Mayhew's assertion (2005, p.215) that divided government is legislatively at least as productive as unified government.

If we do not set aside the emergency legislation, this assertion still holds, as more significant bills were enacted during divided party control. On the average, we have identified for each session of Congress 5.5 enactments for unified governments and 7 enactments for divided governments (2002 and 2007). If we take into account the legislative activity of 2001 as well, the average for each session of Congress is 5 enactments for unified governments, and 6.4 enactments for divided governments.

How can we explain this apparent paradox, that significant legislative output is similar, irrespective of the form of government, i.e. unified or divided? It is important to discuss this issue, because a number of political scientists argued that divided government often results in stalemate and therefore is less productive. (Sundquist, 1988), (Kernell, 2006), (Binder, 1999) A possible explanation can be given by analyzing the common factors affecting legislative activity under divided and under unified governments.

The first common factor present throughout this investigation is the narrowly divided Senate. We can see from Table 7 (Appendix 1) that neither Republicans nor Democrats enjoyed a substantial majority in the Senate during the George W. Bush administration. This situation made filibuster actions possible, as the elections in the time-frame we have examined never resulted in a filibuster-proof supermajority in the Senate (60-40). Thus, even if President George W. Bush enjoyed the advantage of a unified government, the narrow majority in the Senate always left the door open for filibuster action. Therefore, legislation had to be negotiated with the relevant conservative faction of the Democratic Party. The same holds true for the Democrats who had to reach across the aisle in order to promote Democratic initiatives during the divided governments of 2002 and 2007.

When lawmakers could not get enough support across the aisle, they saw their legislative initiatives killed by filibusters. This situation occurred irrespective of which party was in control of the Senate. For example, in 2004, the medical malpractice liability bill, a Republican priority favored by the Republican majority leader Bill Frist, could not get enough support for invoking cloture. The vote was cast along party lines, 48-45, with only one Democrat siding with the Republicans (Robert C. Byrd), and three GOP senators voting against the motion (Michael D. Crapo, Richard C. Shelby and Lindsey Graham). The Republican senators, all three attorneys, were known for their conservative views. Democrat Senator Robert C. Byrd, an attorney as well, the longest serving U.S. senator and president pro-tempore of the Senate, was known for his independent stands. He sided with the Republicans in more than one occasion. (*Congressional Quarterly Almanac 2004*, p.C.4)

In the same way, the Democratic initiative allowing the federal government to negotiate drug prices under Medicare was killed in 2007 by Republican filibuster action in the Senate. The Democratic motion to limit debate was supported by 55 senators, but it was opposed by 42 GOP senators. A group of five moderate Republican senators, Norm Coleman, Susan Collins, Gordon H. Smith, Olympia J. Snowe, Arlen Specter, as well as Senator Chuck Hagel, a libertarian and a vehement critic of the George W. Bush administration, sided with the Democrats. The Democrats did not manage to gather the 60 votes necessary to invoke cloture. Two Republican senators did not vote because they were campaigning for the Republican presidential nomination. Senator John McCain would have supported the Democrats, while Senator Sam Brownback opposed the bill and would have sided with the majority of the Republican senators. (Pear, 2007)

At first glance, the absence of a supermajority can hypothetically lead to continuous filibuster action, but in reality all lawmakers, Republicans or Democrats, have to cooperate and contribute to pass new legislation. They must keep in mind that they have to come up with results, because they answer to their constituencies for their activity and for the way they vote on specific issues. The result is a continuous turmoil of opposition and cooperation, as each party tries to identify possible partners for cooperation in the opposition ranks. This complex mechanism at work ensures that necessary legislation is enacted and functions irrespective of divided or unified governments. The inventory of significant legislation compiled in this study points to this conclusion.

The second factor contributing to the balance of the legislative output between divided and unified governments is the possibility for a piece of legislation to avoid filibusters and be enacted if it is attached as a rider to an appropriation bill. According to the Senate rules, appropriation bills cannot be subject to filibuster action and important pieces of legislation are often attached as amendments to appropriation bills. For example in 2005, Senator McCain's amendment barring cruel or degrading treatment of enemy combatant detainees was attached to the 2006 defense appropriations bill passed at the end of December. Sometimes several pieces of legislation, often unrelated, are clustered into an omnibus bill that is sure to pass in Congress, often at the end of a session. Here the Tax Relief and Health Care Act of 2006 can be mentioned as an example, because it contains provisions permitting oil drilling in parts of the Gulf of Mexico as well as several trade measures.

Another important factor that affects legislative activity irrespective of party control points to the divisions within the political parties. It is important to take into account the fact that the two major parties in Congress cannot be seen as coherent, monolithic units, but as



organizations covering a broad political spectrum from conservative to liberal. Inside the congressional GOP it is possible to identify factions like the establishment conservatives (a majority of the congressional GOP), the social conservatives (advocating moral and religious values), the libertarians (or economic conservatives, advocating small government and personal liberties), and the moderates (liberal on social issues, advocating fiscal responsibility). (Tønnessen 2008, p.1) (*Congressional Quarterly Guide to Current American Government*, Spring 2005, p.27) The main factions of the congressional Democrats are the conservative Democrats, also known in the House as the Blue Dogs, the moderates or the New Democrats, and the liberal Democrats or the Progressives. (*Congressional Quarterly Guide to Current American Government*, Spring 2005, p.19)

President George W. Bush alienated many GOP small-government supporters (libertarians) by expanding the federal government's intervention in education and by establishing a new entitlement program, the Medicare prescription drug benefit. Both issues had been part of President Bush's 2000 electoral campaign agenda and the cornerstones of his "compassionate conservative" platform. The Medicare prescription drug benefits bill passed in the Senate by a vote of 76-21, being opposed only by 10 conservative Republicans and by 11 liberal Democrats. We can say that it passed with bipartisan support in spite of bipartisan opposition. Even though the final version of the bill included provisions favorable to the private sector, some 25 House conservative Republicans still opposed it. The vote was unduly prolonged in order to squeeze enough votes for the bill to pass. Conservative GOP representatives Ernest Istook, C. L. "Butch" Otter, and Trent Franks switched their votes to "yes," giving in to political pressure from the White House and from the House Republican leaders. When it was clear that the bill would pass, other representatives changed their vote too, and the bill passed 220-215. The bill was also supported by 16 Democratic representatives. (*Congressional Quarterly Almanac 2003*, p.C.18)

The intraparty divisions are important for establishing a base for cooperation with factions from the opposition party, as many lawmakers do not follow the mainstream tendency of their own party, but choose to vote according to their own ideology and constituency interests. Regional interests often resulted in bipartisan cooperation<sup>2</sup>. Cross-party cooperation can thus obliterate party divisions in Congress and promote legislation irrespective of conditions of party control. Even if conservative Republicans, especially the libertarians, opposed the expansion of the federal government and its involvement in

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<sup>2</sup> See the Water Resources Development Act of 2007

education, the No Child Left Behind Act of 2001 passed with bipartisan support because it was a Democratic priority as well as a top issue on President George W. Bush's agenda. It is a classic example of cross-party cooperation in times of divided government. In the House, only 10 Democrats, 34 Republicans and one independent opposed the bill, while in the Senate only two Democrats and six Republicans voted against it. However, cooperation and conflict is not limited to the legislative process in Congress, but is extended to the relation between Congress and the president.

### **3.4 Presidential Strategies in Dealing with Congress under Divided and Unified Governments**

U.S. presidents have their own strategies in dealing with Congress, and these strategies vary according to the party in control of Congress. President George W. Bush made use of both partisan and bipartisan strategies in order to promote his political agenda. On the one side he relied on cooperation for promoting social policies like No Child Left Behind, on the other side he relied extensively on the congressional GOP base for promoting his favorite policies, like tax cuts. As a result of his leadership following the 9/11 terrorist attacks, his popularity soared, the political agenda changed fundamentally and, even though the Senate was controlled by Democrats until 2003, Congress supported him and his policies. It worked for national security-related legislation and for the No Child Left Behind Act of 2001. For other issues pertaining to domestic policies, the conflict in Congress built up again in 2002.

Starting in 2003, the Republican majority marginalized the Democrats in Congress, excluding many of them from negotiations in conference. For example, the final version of the Medicare prescription drug coverage bill was drafted by the House and the Senate Republicans who invited only two centrist Democrats at the negotiations. Legislation passed by Congress was so heavily leaning towards the GOP's favorite partisan themes that President George W. Bush did not have to use his veto right until the summer of 2006. This record veto-free presidency lasted for more than five years. He did not use the presidential veto for so long, not because of his moderation, but, on the contrary, because he made extensive use of other "unilateral strategies." President George W. Bush continued in the footsteps of Ronald Reagan, and put the unitary executive theory in practice.

President Bush's unilateral actions aiming at the expansion of presidential power upset the balance between the executive and the legislative branches of the government. Here we emphasize his extensive use of executive orders and unprecedented use of signing statements that were examined by Kelly and Marshall (2009) in their discussion about the use and abuse

of presidential unilateral powers. Executive orders are important tools for the president to exert his power, control the executive agencies and instruct them on policy implementation. This study focuses on the president-Congress relationship and therefore we direct the reader's attention to presidential signing statements rather than to executive orders.

In his bargaining strategies aimed at influencing Congress, President George W. Bush often started by using veto threats in order to attain compromise gains from Congress. Then he signed the bill appending a signing statement to further advance the enacted policies towards his preferences. He used this strategy for a number of years without drawing much attention, but media and political scientists began to be interested in it after the publicity surrounding the McCain amendment prohibiting torture or degrading treatment of detainees. (Friel, 2006) This amendment was introduced as part of the Department of Defense Appropriations Act, 2006, and four provisions of the bill drew presidential veto threats. Congress compromised on at least one of the issues, but Senator McCain did not give in to political pressure. President Bush signed the bill into law in a ceremony held at the White House where Senator McCain was invited to participate. In a signing statement issued two weeks later, the president declared that, as commander in chief, he had the authority to challenge some provisions of the law regarding interrogation techniques, in order to prevent further terrorist attacks and protect the American people. (Kelly and Marshall, 2009)

The president used this questionable tactic and defied the will of Congress. Thus he allowed the use of torture, outlawed by the Geneva Convention and illegal in United States as well. He chose not to veto the appropriations bill containing the McCain amendment, which had passed with bipartisan support in the House and by unanimous consent in the Senate, because Congress could have overridden his veto; therefore President Bush avoided open confrontation and made use of a signing statement. The president avoided a fight he could very well lose; he chose to kill the very substance of the McCain amendment with a knife in the back.

Actually, not all signing statements are used to challenge provisions of the law. Political scientists have identified several categories of signing statements. First we have to mention the rhetorical signing statements, issued in order to "praise allies and scorn foes." (Kelly and Marshall 2008, p.251) Another category of presidential signing statement includes statements issued "to influence a particular political actor – either executive branch bureaucrats or federal judges." (Kelly and Marshall 2008, p.251) The last category concerns signing statements issued to challenge some provisions of law on constitutional grounds, even as the president signs the bill into law.

Most of President George W. Bush's signing statements were not rhetorical, but aimed at the constitutionality of some provisions of the laws. He had challenged more than 1,000 provisions of more than 100 laws by 2008. (Kinkopf and Shane, 2007) His strategy to work with Congress was to avoid direct confrontation until 2007. He made extensive use of signing statements under both unified and divided governments, but in 2007 he started vetoing legislation promoted by the Democrat-controlled Congress and issued far less signing statements. By issuing a signing statement, the president reserves for himself the right to have the final say, and denies Congress any right to reply. In this way, the president can shift the policy content on his grounds, according to his views. (Kelly and Marshall 2009)

Friel (2006) considers that the signing statements used by President Bush to challenge certain provisions of the laws he had signed were issued with the intent to enhance the leverage of the executive branch and expand presidential powers. In fact, most of the signing statements issued by the Bush administration were aimed at reducing the influence of Congress in the operations of the executive agencies. The strategy of unilateral action had its roots in the Unitary Executive Theory, conceived and used for the first time during the Reagan administration. The supporters of this theory claim that the U.S. Constitution empowers the president to direct the executive agencies how to implement the laws. They tend to forget that the American Constitution also gives Congress the authority to establish the rules relevant for the activity of federal agencies. (Savage, 2008)

President George W. Bush preferred to rely on signing statements to tune legislation according to what he wanted, instead of engaging in a direct confrontation with Congress. This presidential action has raised questions about the constitutionality of the signing statements issued with the intention to disregard or interpret certain provisions of law. The American Bar Association (2006) organized a "Task Force on Presidential Signing Statements and the Separation of Power Doctrine" to examine the constitutionality of the presidential signing statements, and stated in its report:

That the American Bar Association opposes, as contrary to the rule of law and our constitutional system of separation of powers, the issuance of presidential signing statements that claim the authority or state the intention to disregard or decline to enforce all or part of a law the President has signed, or to interpret such a law in a manner inconsistent with the clear intent of Congress.

In its report, the American Bar Association (ABA) also underlines that the president has the power to sign a bill into law, or to veto a bill to which he objects. The constitutionality of a law or of certain provisions of a law can be assessed only through the judicial review process performed by the Supreme Court. By issuing a signing statement with the same effect,

President George W. Bush substituted the authority of the Supreme Court to invalidate congressional acts by an unconstitutional action of an unqualified actor. The American Constitution (Article II §3) demands the president to obey and enforce all provisions of all laws, including those he signed himself. Issuing a signing statement amounts to a line-item veto, a procedure that was used by President Bill Clinton but was declared unconstitutional by a Supreme Court decision in 1998 (*Clinton v. City of New York*). (American Bar Association 2006, p.18-23) With each signing statement issued on constitutional grounds, President George W. Bush strayed from the spirit of the Constitution and undermined democracy itself.

Why did Congress do nothing to address the controversial issue of the presidential signing statements on constitutional grounds? In fact Congress did pass a bill in 2002 (the 21st Century Department of Justice Appropriations Authorization Act) requiring the Attorney General to report to Congress any instance when any provision of law was not implemented on constitutional grounds. However, President George W. Bush issued a signing statement to this very law, declaring that his administration would withhold information that could threaten national security, foreign relations, and the performance of the executive branch. (American Bar Association 2006, p.24-25) In fact, the presidential signing statements are published in the *Weekly Compilation of Presidential Documents*, but President George W. Bush's extensive use of signing statements escaped public opinion until Charlie Savage, a reporter for *The Boston Globe*, drew attention to President Bush's abusive use of signing statements.

Following the media coverage of this controversy, Congress acted by taking more steps to enact legislation dealing with presidential signing statements. In the Senate, the Judiciary Committee held hearings on the matter, and the Republican Senator Arlen Specter, the chairman of the committee, introduced a bill to this effect, the "Presidential Signing Statement Act of 2006." In the House, the Democrat Representative Barney Frank introduced H.J.Res.87 and H.J.Res.89 requiring the president to inform Congress of his intention of appending a signing statement. These bills were unfortunately lost in the labyrinth of congressional committees.

Even though Congress did not manage to finalize any bill on the subject, all these debates were not in vain. The number of signing statements decreased dramatically in 2007, while the number of vetoed bills increased accordingly. In 2007, the George W. Bush administration issued only eight signing statements compared to twenty-three the year before, but the president vetoed seven bills compared to one in 2006 and none between 2001 and 2006. This dramatic change of strategy cannot be attributed only to the shift in the balance of power in Congress. It is true that in 2007 President George W. Bush had to deal with divided

government, but he had to deal with divided government in 2002 as well. Yet in 2002 he did not veto any bill, although he issued 34 signing statements. (See Figure 1)

If we examine 2002 and 2007, two years with divided party control of the American government, we note that in 2002, the House of Representatives was under Republican control, and only the Senate was controlled by Democrats with a paper thin majority (50 Democrats – 49 Republicans). In 2007, President Bush had to face a more hostile Congress controlled entirely by Democrats after the 2006 midterm elections. The 2007 congressional agenda differed substantially from the presidential agenda. The Democrat-controlled Congress pushed for legislation consistent with their “Six in 06” program, while the GOP priorities were set aside. Thus the presidential signing statements targeting only certain provisions of laws were replaced by presidential vetoes. (See Figure 1) The president rejected the bills to which he objected, taking the fight with the Democrat-controlled Congress.

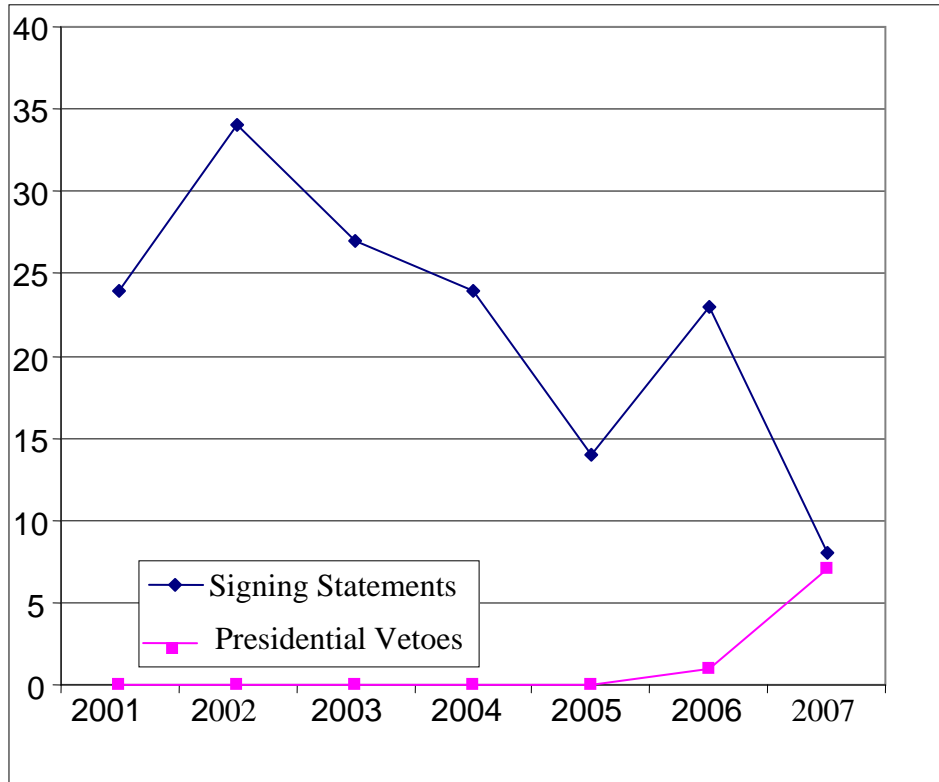
It is interesting to point out that in 2002 Congress backed President Bush on his plans to invade Iraq, while in 2007 the situation was actually opposite. The president wanted to continue the surge and to escalate the military operations in Iraq, while the Democrats in Congress had just won the elections on the promise to bring home the American troops from Iraq. In 2002, President Bush enjoyed high popularity, while in 2007 he had low job approval rates, and the war in Iraq had become very unpopular as well.

Looking into the enacted legislation, we can see that in 2002, in times of divided government, Congress passed nine significant bills, the largest number for the time period under study. At the same time, in 2002 President Bush signed the largest number of signing statements of his presidency without vetoing any bill. In 2007, the conflict between the now unpopular President Bush and the Democrat-controlled Congress took another dimension. The president vetoed seven bills, but issued only eight signing statements. (See Figure 1)

This radical change of strategy can be attributed to several factors. First, the media coverage of President George W. Bush’s strategy of issuing signing statements on constitutional grounds, and the subsequent nationwide debate on the increase of the presidential powers at the expense of Congress and the judiciary branch led to congressional action, even though the legislation initiated by Senator Arlen Specter and by Representative Barney Frank could not progress.

Figure 1

The evolution of the presidential signing statements and the presidential vetoes showing the correlation between the increase of the presidential vetoes and the decrease of the presidential signing statements



**Source:** Data compiled from Presidential Signing Statements. 2001 - Present

Available at: <http://www.coherentbabble.com/listGWBall.htm>

On the other hand, the level of conflict with Congress escalated in 2007, and President Bush vetoed seven bills as he had no incentive to sign bills and enact legislation advanced by the Democrats. Presidential vetoes are important tools used to stop the initiatives of the opposition party; for example the Democrat-sponsored bill, the Children's Health Insurance Program Reauthorization Act of 2007, was vetoed by President Bush in October 2007. In fact, the president even vetoed the revised bill two months later. On the other hand, in case of spending bills, presidential vetoes are used in order to send the bills back to Congress to be reconsidered.

Funding for military activities and domestic programs has to be appropriated, thus in the end spending bills have to be agreed upon. In 2007, President Bush vetoed three appropriation bills and all three were returned to the president to be signed, which he did, because they had been modified taking into account his objections. For example, the

Democrats had to give up their timetable for withdrawing the US troops from Iraq, attached to the supplemental appropriation bill for the war, and presented the president a new version without the timetable. President Bush signed the new version that became law.

We cannot discuss President George W. Bush's veto policy without highlighting the other side of the coin, the strategy of the Democrat-controlled Congress. The Democrats knew that President Bush would veto bills like stem cell research or children's health insurance, and yet they pushed them on the president's desk. The resulting veto, media coverage and publicity were sure to play to their advantage in the 2008 elections.

Although the first five years of his presidency were remarkably veto-free, President Bush extensively used veto threats in the attempt to bring Congress in line with his political views and preferences, even when Republicans were in control of Congress. Congress responded to these signals and adjusted legislation accordingly, therefore we can say that the president had his way most of the time and successfully influenced the legislative process. According to the *Congressional Quarterly Almanac Plus*, (2001-2006, Appendix B, Vote Studies) President George W. Bush won on roll call votes on which he expressed his position 80.9% for his first six years in office (data compiled from House and Senate figures).

In June 2006, President Bush's veto threats materialized in the first veto of his presidency. As the 2006 midterm elections were approaching, many congressional Republicans wanted to distance themselves from the more and more unpopular president, and they shifted their position siding with the Democrats for the Stem Cell Research Enhancement Act. The president vetoed the bill the same day it was presented to him (June 19, 2006), and his veto-free record came to a stop. In 2007, after Democrats took control of both chambers of Congress, the level of conflict between the White House and Capitol Hill intensified and the number of veto threats coming from the president increased dramatically. In the first half of 2007, President Bush made public his opposition and threatened to veto 48 bills "compared with a previous high of 22 bills for all of 2003." (Jackson, 2007) This time President Bush's veto threats materialized in seven vetoes showing clearly that the level of conflict between the president and the Democrat-controlled Congress escalated to a higher level. Even though party control did not have a significant effect on the legislative output, it had a clear influence on the strategies used by President George W. Bush in his relation with Congress. The frequency of signing statements, presidential vetoes and veto threats varied synchronically with the condition of party control of Congress.



### **3.5 Vetoed Legislation**

Mayhew (2005) considered enacted legislation the most important factor for evaluating the legislative productivity of the government. However, life shows that lost opportunities are as important as the accomplishments, and in the realm of politics, as in everyday life, unsolved problems might have dire consequences later on. Legislation vetoed by the president was meant to address issues that are important for the American society. While enacted legislation reveals the cooperation within the U.S. government, vetoed legislation is the direct result of the conflict between the president and Congress. President George W. Bush vetoed only one bill in times of unified government, while in 2007, when both chambers of Congress were controlled by Democrats, he vetoed seven bills. (See Table 10)

During President Bush's second term in office, deepening rifts between congressional Republicans and the White House resulted in the first presidential veto. The core of the dispute was the stem cell research funding. In August 2001, President Bush publicly announced his position that federal funds were available for research on stem cell lines already existing at that date, but he prohibited the use of federal funds for new research projects. In addition, he issued a veto threat against any legislation that would broaden the research beyond the limits he imposed (Bruni, 2001). The antiabortion activists and the conservative Republicans considered the destruction of human embryos as an abortion de facto, and they vigorously opposed using them for research purposes.

In 2005, President George W. Bush's popularity was in decline, and some of the congressional Republicans showed signs of independence in an attempt to position themselves closer to the needs of their constituencies, as many biotechnology companies were dependent on federal grants for their research. A bill to expand the funding for stem cell research was passed by the House in May 2005. The bill was considered by the Senate two months later, after Senate Majority Leader Bill Frist changed his position on the issue and supported the bill. Still, the bill advanced slowly in the Senate, and it took one year to gather enough supporters and clear it for the White House. The president vetoed it the next day. The House attempted to override President Bush's veto, but it did not succeed. This presidential veto was the first one issued by President George W. Bush after more than five years in office, but it would not be his last. In fact, it would not be his last veto on the issue of stem cell research either. This particular bill shows the ongoing conflict between pro-life and pro-choice activists, reflecting the conflict between conservative Republicans and Democrats. The conflict continued in 2007, after Democrats took control of Congress.

Table 10

Laws vetoed by President George W. Bush

Nr.	Date of veto	Bill	Title	Obs.
1	July 19, 2006	H.R. 810	Stem Cell Research Enhancement Act of 2005	
2	May 1, 2007	H.R. 1591	U.S. Troop Readiness, Veterans' Health, and Iraq Accountability Act, 2007	
3	June 20, 2007	H.R. 3 / S. 5	Stem Cell Research Enhancement Act of 2007	
4	Oct. 3, 2007	H.R. 976	Children's Health Insurance Program Reauthorization Act of 2007	
5	Nov. 2, 2007	H.R. 1495	Water Resources Development Act of 2007	<b>Overridden PL 110-114</b>
6	Nov.13, 2007	H.R. 3043	Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008	
7	Dec.12, 2007	H.R. 3963	Children's Health Insurance Program Reauthorization Act of 2007	
8	Dec.28, 2007	H.R. 1585	National Defense Authorization Act for Fiscal Year 2008	

**Source:** Speaker of the House - Legislation of the 110th Congress

Available at: <http://www.speaker.gov/newsroom/legislation?id=0298>

The Democrats reintroduced another version of the same bill on stem cell research early in January 2007, as part of their 100-hour agenda. The Senate also passed its own version of the Stem Cell Research Enhancement Act of 2007, and the House approved the Senate version clearing the bill for the White House. President George W. Bush vetoed the bill on June 20, 2007 (THOMAS, The Library of Congress online, 110<sup>th</sup> Congress). Congress did not initiate the procedures to override the presidential veto.

Another confrontation between President George W. Bush and Congress was brought about in 2007 by the attempt of the Democrat-controlled Congress to impose a timeline for U.S. troops' withdrawal from Iraq. The Democrats' position was in accordance with their electoral promises and in line with the public opinion. However, President George W. Bush announced at the beginning of the year that even more troops (more than 20,000 soldiers) would be sent into the line of fire. This change of strategy was in direct opposition to the

viewpoint of Congress, to the public opinion, and to the recommendations of the bipartisan Iraq Study Group (*Congressional Quarterly Almanac 2007*, p.1.5)

Democrats included the timetable for redeployment of U.S. armed forces in Iraq in several bills initiated in the House, but they were defeated at various stages of the legislative process, either in committees or by Republican filibuster actions in the Senate. Still, the timetable for scaling down the U.S. troop involvement in combat was attached to the supplemental appropriations bill that, according to the Senate rules, was exempt from filibuster actions. The U.S. Troop Readiness, Veterans' Health, and Iraq Accountability Act reached the President's desk, and it was immediately vetoed. However, the troops in the line of fire in Iraq could not be left without funds, and President George W. Bush gambled on the Democrats' reluctance to be seen as responsible for leaving the troops on the ground without material support. The president's gamble paid off, because Congress reconsidered its position and passed another version of the bill without the timetable for scaling down the American troops. President Bush obtained only part of the funding he had requested, but he signed the bill into law.

In the domestic policy arena, the George W. Bush administration and the Democrat-controlled Congress had an open confrontation over the children's health insurance bill. The program covering 6.6 million children from low-income families was set to expire before the end of 2007. Democrats wanted to extend the validity of the program and, at the same time, to expand it to cover 10 million children from low- and middle-income families. The Children's Health Insurance Program Reauthorization Act of 2007 passed with bipartisan support in Congress, yet President George W. Bush vetoed it. He claimed that the bill represented a step in the direction of federalization of health care. Moreover, the bill would have used \$35 billion more than the expiring program and \$30 billion more than President Bush wanted.

The president's veto surprised everybody, including the Republican lawmakers who had supported the bill. The Republican Senator Gordon Smith declared that it was "an irresponsible use of the veto pen." (Stout, 2007) The Democrats were furious, but they did not succeed in overriding the veto. Their position was openly expressed by the Democratic Senator Edward M. Kennedy, the chairman of the Health, Education, Labor and Pensions Committee: "Today we learned that the same president who is willing to throw away a half trillion dollars in Iraq is unwilling to spend a small fraction of that amount to bring health care to American children." (Stout, 2007)

According to the declaration of the White House spokeswoman, Dana Perino, President George W. Bush was willing to reach a compromise on the bill. (Stout, 2007)

Congress passed a revised version of the bill that contained provisions for raising tobacco taxes in order to finance the program, calculating that an increase of up to \$1 per cigarettes pack would be enough to offset the additional cost of the program. (*Congressional Quarterly Almanac 2007*, p.C.6) The White House did not change its position, and President George W. Bush vetoed the revised version of the bill declaring that it was “identical” with the one he had already rejected. In the end, Congress passed an extension to the expiring program, providing funding only for the persons already enrolled in the program.

The conflict over the Children's Health Insurance Program was in fact a fight over budgetary spending. House Majority Leader Nancy Pelosi declared in October 2007 that: “For the cost of less than 40 days in Iraq, we could provide health care coverage to 10 million children for an entire year,” (*Congressional Quarterly Almanac 2007*, p.1.5) while the White House claimed in December that the Democrat-controlled Congress refused “to provide the needed funding for our troops in combat...even while providing full-year funding for lower-priority domestic programs.” (*Congressional Quarterly Almanac 2007*, p.1.6)

Both sides in the conflict claimed victory. President Bush could claim to be a responsible fiscal administrator, standing firm against federal coverage of health care. On the other side of the arena, the Democrats could accuse the president of throwing a “heartless veto” and not caring for the priorities of the American people and the health of children in low- and middle-income American families. (Stout, 2007) At this point it is important to remember that in 2000, George W. Bush campaigned on a compassionate conservative program only to twice reject seven years later a bill providing health care coverage for children. In 2007, he moved farther and farther away from the moderate Republicans and from the hearts of the American people.

The conflict between President Bush and Congress regarding expenditures for domestic programs continued, because Congress approved increased funding for running programs in the Departments of Labor, Health and Human Services, and Education. President George W. Bush vetoed the omnibus bill on November 13, 2007, because it would provide \$21.3 billion over the limit he required. The override attempt failed only by two votes in the House, and Congress had to concede to the president, even though the bill had bipartisan support. President Bush also objected to the Water Resources Development bill because it was too costly; \$23.2 billion was a high price that President George W. Bush was not willing to accept. He vetoed the bill on November 2, but Congress easily managed to override the presidential veto. This was the only presidential veto overridden by Congress in 2007. The bill practically contained only local projects, and the fact that President Bush's veto was

overridden proved that party loyalty was faltering when congressional Republicans were confronted with the prospect of acquiring funds for projects that would benefit their constituencies. On the other side of the aisle, Democrats were happy to embark on environmental projects for their constituencies too, so the bill had a green light from start to finish, even though President Bush tried to stop it. (*Congressional Quarterly Almanac 2007*, C.6, C.10)

President Bush's last veto of 2007 was the result of miscommunication between the White House and Congress. In a way, this illustrates the quality of the relation between the two branches of the government at the end of 2007. The continuous confrontations between President Bush and the Democrat-controlled Congress culminated in a surprising veto for a provision that was not really an issue of dispute. The president refused to sign into law the National Defense Authorization Act for Fiscal Year 2008. As Congress was already adjourned, this pocket veto was sending the bill back to Congress for reconsideration. It contained a provision regarding Iraqi funds in American banks that could have been blocked by lawsuits against crimes committed by the Saddam Hussein dictatorial regime. The new elected Iraqi government complained, claiming that they did not want to have their financial resources blocked in American banks. Democrats stated that this veto could have been prevented if Congress had been informed beforehand, and according to the White House spokesman Scott Stanzel, President Bush had nothing against a new version of the bill without the provision concerning Iraq. (Myers and Stout, 2007)

The overall picture of the conflict between President George W. Bush and the Democrat-controlled Congress shows three areas of dispute: the stem cell research funding, budgetary discipline and the timetable for troop withdrawal from Iraq. The conflict around the stem cell research arose from the fundamental differences between the pro-choice and the pro-life ideologies, opposing the Democrats to President George W. Bush and the conservative Republicans. Some Republicans sided with the Democrats against the president, but their combined force was not enough to override the presidential veto. This conflict was present during both unified and divided governments. It was to be expected in times of divided government, but surprisingly the conflict surfaced during the unified government of 2005, and resulted in the first presidential veto issued after more than five years.

The dispute regarding budgetary discipline arose from the fact that Democrats favored spending on domestic programs, while the George W. Bush administration would rather spend money on defense and the wars in Iraq and Afghanistan. As result of this conflict four bills addressing domestic policy issues were vetoed in 2007. President Bush strongly objected

to increase spending for domestic programs, forgetting his compassionate conservatism philosophy. He asked for bipartisanship when he needed to promote his social programs, but he was not willing to offer support for the social programs promoted by the Democrat-controlled Congress. While in times of unified government President Bush ignored budget discipline, promoting numerous tax cuts and spending enormous funds for the war on two fronts, he invoked fiscal restraint in 2007 when Democrats promoted their agenda.

The conflict between President George W. Bush and the Democrat-controlled Congress reached its apogee around the issue of the timetable for the U.S. troop withdrawal from Iraq. President Bush finally listened to the voices criticizing him for not providing enough troops on the ground and approved the surge of troops in Iraq, but he did it at the wrong moment. It was the last moment, because the situation on the ground worsened, but it was the wrong moment because it coincided with the change of power in Congress. Democrats had a mandate to bring the troops home, while the president wanted to send more troops in the line of fire. The conflict persisted throughout 2007. Congress spent much time and effort trying to enforce a timetable for withdrawal, but to no avail. The president stood firm on his position, the surge was successfully implemented, and the Democrats in Congress had to provide the necessary funds for the war with no strings attached.

### **3.6 Conclusion**

The data collected and analyzed in this chapter shows that divided government is at least as productive as unified government regarding the number of significant laws enacted. The conflict inherent between the president and the opposition-controlled Congress did not result in a reduced number of significant laws enacted, but it was evident in the number of presidential vetoes and veto threats. It is interesting to note that the number of presidential signing statements is inversely correlated with the number of presidential vetoes. This can be attributed to a change of the strategy used by President George W. Bush when the control of Congress changed from the Republican Party to the Democratic Party.

In 2007, when Congress promoted a Democratic agenda, President Bush chose to block some of the Democratic initiatives by presidential vetoes. This was in contrast to the strategy he had used when dealing with the Republican-controlled Congress; then he could adjust legislation to his preferences by issuing signing statements, challenging certain provisions of enacted laws. President Bush claimed that he issued signing statements in order to defend the Constitution, but by doing so he defied the very spirit of the American Constitution. The confrontation between the executive and the legislative branches of the

government is at the heart of the American political system. By avoiding direct confrontation with Congress, President George W. Bush infringed on an important political mechanism that stood the test of time, a mechanism conceived by the Founding Fathers over 200 years ago.

Even though President Bush issued eight signing statements in 2007, this number was in sharp decline from the previous years, while the number of presidential vetoes soared from one in 2006 to seven in 2007. President Bush's relation with Congress changed constantly throughout the years. It started with a lukewarm relationship, because the Democrats in Congress were frustrated after the controversial 2000 elections. Following the 9/11 terrorist attacks, Congress supported President Bush and promoted his agenda, but this support eroded during years of mismanagement of the war in Iraq. The relation between President George W. Bush and Congress changed from cooperation to open conflict in 2007, after the Democrats won the midterm elections and controlled both chambers of Congress. The data analyzed in this chapter shows that the level of conflict between President Bush and Congress resulted in a substantial increase of presidential vetoes while the number of signing statements plummeted.

Studying the law inventory, it is easy to see the impact and the ripple effect of the terrorist attacks of 9/11 on the number of bills enacted into law. This spur of legislative activity took place during a period of divided government. The tragic events of 9/11 triggered a period of bipartisan cooperation in Congress, and between Congress and the George W. Bush administration, in matters of national security. Analyzing the data from the law inventory for this period, the impact of the terrorist attacks was taken into account by setting aside the emergency laws on national security, as it is important to avoid making general statements based on a singular, extraordinary event. Analyzing the data without separating the emergency laws leads to the same conclusion: divided governments were at least as productive as unified governments during the George W. Bush administration.

## **CHAPTER 4: DOMESTIC POLICY AND TRADE**

### **4.1 Introduction**

The inventory of important legislation passed in each session of Congress between 2001 and 2007 was identified and presented in Chapter 3. The relations between President George W. Bush and the U.S. Congress leading to vetoed legislation and signing statements were also discussed. Chapter 4 analyzes in detail the political, the social and the economic context of the domestic policy area that made necessary changes in legislation or enactment of new legislation, addressing the question of why important legislation is passed both during unified and divided governments. The relations between the White House and Congress, as well as the mechanisms at work within Congress, are also explored in this chapter, answering the question of how important legislation was adopted.

In this chapter, the main presidential initiatives advanced in the State of the Union Address are summarized for each year, and the legislation stemming from these initiatives is identified. Analyzing President Bush's agenda and his requests for Congress, it is possible to identify which initiatives were enacted, and which initiatives were postponed, ignored or stalled in Congress. This reveals the level of cooperation or the level of conflict between the president and Congress, both during unified or divided governments. In fact, the enacted legislation presented in this chapter reflects the level of cooperation in the government, because no bill can advance and become public law without cooperation and compromise. Still, there are exceptions, and vetoed legislation can become public law when the presidential veto is overridden by Congress. (See Chapter 3: Vetoed Legislation)

Even though this paper does not aim to analyze the 9/11 terrorist attacks, their impact and their subsequent consequences for American politics are too important to be ignored, both for national security and for domestic policies; therefore the relevant effects of the 9/11 attacks on the American political life will be highlighted. The legislative activity of Congress, organized and presented in Chapter 3, is analyzed in detail; the political process leading to the enactment of each significant law is discussed throughout this chapter, and the resulting laws are presented in chronological order. For the unified governments of 2003-2006, the enactments are grouped in themes and analyzed together in Subchapter 4.4. Some laws that are less relevant for the cooperation and the conflicts within the U.S. government are presented in Appendix 2. Subchapter 4.6 discusses significant legislation addressing trade enacted irrespective of party control conditions.



## **4.2 The Unified Government of 2001**

In the realm of domestic policy, it is important to examine the first year of George W. Bush's presidency from the point of view of his electoral promises made during the electoral campaign of 2000. In the battle against the Democratic candidate, Al Gore, George W. Bush campaigned on the formula of "compassionate conservatism," advocating substantial reforms in public education, Medicare, Social Security, and health insurance. He also promised significant tax cuts. Of these campaign promises, only one materialized during the unified government of 2001, the tax cuts or The Economic Growth and Tax Relief Reconciliation Act of 2001. The outcome of the first presidential elections of the millennium was tight not only in the presidential race but also in Congress: The seats in the Senate were distributed 50-50, with Vice-President Dick Cheney having the decisive tie vote, while the House was controlled by Republicans with a majority of 11 seats. Still, President Bush enjoyed the benefits of a unified government, the first unified government under Republican control since Dwight Eisenhower, almost five decades before (1952-1954).

On February 27, 2001, President George W. Bush presented his political agenda in the State of the Union Address. It is important to look into the issues he raised in this address, because they represented his political views and substantiated his electoral promises. The issues raised in his address to Congress reflected his priorities unaffected by the September 11, 2001, terrorist attacks. President Bush discussed domestic policies issues such as reforming Social Security, Medicare, and education. He proposed legislation to provide support for faith-based and community groups in their charity work. President Bush also advanced his taxation policy of tax reduction at all levels in order to stimulate economic development, promising at the same time to pay off \$2 trillion of the national debt in ten years. The president underscored the importance of free trade, and asked Congress for the fast-track trade authority. He mentioned issues like environmental protection and energy policy as well.

All these issues were debated by Congress at one point or another during George W. Bush's presidency and many of them materialized in significant legislation. Some of President Bush's proposals presented in the 2001 State of the Union Address were enacted later, while some could never pass in Congress. The enacted legislation shows the level of cooperation between President Bush and Congress, while his proposals that could not pass show the level of conflict between the president and Congress.

What strategies did George W. Bush use in dealing with such an evenly divided Congress and in pushing his domestic agenda? His agenda included education reforms and social policies, seen as favorite issues of the Democrats, thus he was able to promote his own

political agenda with bipartisan support. Scholars agree that President Bush moved decisively towards delivering on his electoral promises. He did build bipartisan support for his social policies, but in the area of fiscal policies he relied on strong partisan support and party loyalty, as well as support from a few Democrats. As Barbara Sinclair (2008, p.173) shows in her contribution to *The George W. Bush Legacy*, the President used “divergent strategies” to promote his top legislative priorities. He used a “dominant, aggressively partisan strategy” to get the tax cut bill enacted, while the education reform law known as the No Child Left Behind Act of 2001, finalized at the end of the year in conditions of divided party control, was passed due to a bipartisan strategy based on negotiations that led to compromise. (Sinclair 2008, p.169) The president also put pressure on Congress by going public on tax issues, while the education reform was promoted by negotiations with the Democrats.

Even though the GOP controlled both the House and the Senate, the Republicans were forced to enter a power-sharing agreement with the Democrats in the Senate, where the 50-50 vote distribution could easily lead to gridlock. This agreement, “unprecedented in Senate history,” gave them and the Democrats an equal number of chairs in the committees. (*Congressional Quarterly Almanac 2001*, p.1.3) In case of an evenly split vote regarding a bill or a nomination, the whole matter was to be resolved in the Senate session, where Vice-President Dick Cheney would have the decisive vote. Still, this agreement was not to be used for budget resolutions, which are protected from filibuster actions by Senate rules, and can be decided with a simple majority of votes. Therefore, in order to avoid filibusters, the tax cut bill was introduced in the Senate as part of the budget process and thus became protected.

We can identify several economic and political factors that converged and created the necessary conditions for the 2001 tax cut law. First, the American economy was showing signs of slowing down, and the prospect of recession brought together Republicans and some moderate Democrats in recognizing the necessity of passing a tax cut stimulus package. At that time, the United States experienced a budget surplus; therefore Congress had resources to enact the central piece of President George W. Bush’s economic policy. The president promised to reduce the taxation level, as he wanted to follow in the footsteps of Ronald Reagan. The economic development that followed Reagan’s fiscal policies was generated by substantial tax reductions and budget cuts on non-military programs.

The GOP favored tax reductions for people with higher incomes, but they attracted a group of Democrats by inserting a tax relief for parents and putting an end to estate taxes. (*Congressional Quarterly Almanac 2001*, p.C.11) The House passed its own version of the bill in accordance with President George W. Bush’s plan of \$1.6 trillion over ten years. In the

Senate, the tax reduction bill was attached to the fiscal year 2002 that put a ceiling of \$1.35 trillion on the tax cuts and offered protection from filibuster action. The Democrats in the Senate supported the amendment introduced by the Democrat Senator Tom Harkin, reducing the tax cut by \$448 billion, which was to be evenly distributed between education spending and reducing the national debt. At the same time, the Republican Senator James M. Jeffords was trying to negotiate an increase of funding for special education. Senator Tom Harkin's amendment was adopted with support from three Republican senators (Lincoln Chafee, James M. Jeffords and Arlen Specter). (*Congressional Quarterly Almanac 2001*, p.1.6)

The final negotiated bill was close to the Senate version that stipulated \$1.35 trillion tax cuts spread over ten years. Even though President George W. Bush did not get all he wanted, he declared the Economic Growth and Tax Relief Reconciliation Act of 2001 a victory in line with his own policy, representing the largest tax reduction since Ronald Reagan. The Democrats could also claim victory, as they managed to downsize the tax cut and include in the budget some increases in spending for education programs.

It is interesting to remark that all tax-cut laws enacted during George W. Bush's presidency were passed during unified governments, as President George W. Bush's taxation policy would have been difficult to implement when Congress was controlled by Democrats. In fact, in May 2001, President Bush asked Senator James Jeffords to delay the announcement of his decision to leave the Republican Party and become an independent aligned with the Democrats. The announcement could have put the first tax-cut bill of the George W. Bush administration in jeopardy. Senator Jeffords agreed to postpone his announcement in order to avoid giving the Democrats control over the Senate before the tax cut bill was passed. He made the announcement the day after the final version of the bill passed in the Senate. (*Congressional Quarterly Almanac 2001*, p.1.6)

#### **4.3 The Divided Government of 2001 and 2002**

Senator Jeffords' decision to leave the Republican Party changed the balance of power in Congress, because Democrats gained control of the Senate and its influential committees. The United States had again a divided government only after five months of unified party control. Senator Jeffords tried to make special education a separate entitlement but he was not successful, and although he obtained \$100 billion for funding special education, he was disappointed. He could not be persuaded by President Bush to reconsider his decision to leave the Republican Party. Thus education policy disagreements changed the balance of power in the Senate.

Although Democrats gained control of the Senate in May, they did not have time to promote their own agenda, as the events of 9/11 imposed a different set of priorities in Congress. Education reform was a Democratic priority as well as an important issue for which President George W. Bush had vigorously campaigned in 2000. In January 2001, President Bush had the initiative and invited four personalities<sup>3</sup> from both parties to write the draft of the bill. The president advocated the introduction of annual tests for students in third through eighth grades in reading and math to evaluate the students' progress, vouchers for students in schools that performed at a lower level, increased federal funding, and increased flexibility for the states in using these funds. President Bush used a bipartisan strategy to move the education reform bill forward, showing his disposition to accept compromises. The bill was subject to bipartisan negotiations, but the 9/11 terrorist attacks delayed the vote on the bill until the end of the year. The final version of the No Child Left Behind Act of 2001 was passed with strong bipartisan support both in the House and in the Senate (384-34 and 91-8). (*Congressional Quarterly Almanac 2001*, p.1.12)

Democrats and moderate Republicans alike put their mark on the education reform bill, adding funding and limiting the flexibility provisions. President George W. Bush could claim a significant victory, because an important issue among his electoral promises was enacted into law. The most important provisions of his education reform proposals, namely testing in reading and math skills at the national level leading to school accountability were included in the final version. Other provisions like vouchers and increased flexibility were dropped, as Democrats opposed them. (Sinclair 2008, p.173) The education reform bill was an ambitious enterprise and a landmark legislative achievement of the George W. Bush administration, a good example of cooperation and compromise within the U.S. government. The substantial increase of the federal government's role in education was opposed by small government advocates, but it drew support from the ranks of the Democrats. The No Child Left Behind Act of 2001 was the most important education reform since the Elementary and Secondary Education Act of 1965. However, the implementation of the law drew criticism: Some critics said that funding was less than adequate; others questioned the efficiency of the standardized national testing. (Darling-Hammond, 2007)

In the 2002 State of the Union Address, President George W. Bush focused his message, as expected, on issues pertaining to national security and the war on terrorism. After

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<sup>3</sup> Democrat Sen. Edward M. Kennedy, Republican Sen. Judd Gregg, Democrat Repr. George Miller and Republican Repr. John Boehner

making clear that national security was the number one priority of the governmental activity, President Bush addressed a number of issues pertaining to domestic policies. He proposed to make permanent the 2001 tax cuts and repeated his plea for modernizing the Medicare system for seniors, and for supporting charities and faith-based groups. Following the Enron scandal, President Bush asked for a bill enforcing new accounting standards and safeguarding pension plans for employees working in private companies. He also asked Congress to pass a patients' bill of rights, a new farm bill, and an energy bill.

In 2002, Congress passed only two significant bills addressing domestic policy from the president's program presented in his State of the Union Address (the farm bill and the corporate responsibility act). Congress also granted the president the fast-track trade negotiating authority. Some of his proposals were enacted later, because in 2002 the government focused on national security issues. Nevertheless, the Democrats wanted to press their own agenda and focused on domestic issues. The Republicans were pressing more on policies connected to national security. As 2002 was an election year, both parties were promoting their favorite issues for future arguments in the approaching electoral battle. The bipartisan spirit, dominant after the 9/11 attacks, was gradually replaced by partisan fighting and arguments that mostly plagued the lawmaking process in the domestic policy area. However, it is remarkable that Congress managed to pass a relatively large number of important bills not related to national security.

The terrorist attacks of September 11, 2001, had a strong impact not only on national security related legislation, but also on legislation addressing domestic policy. Congress made the federal government the insurer of last resort and passed the Terrorism Risk Insurance Act of 2002 that was aimed at relieving the strained American insurance companies, following the enormous financial losses caused by the 9/11 terrorist attacks. The provision banning punitive damage in lawsuits created a controversy in the Senate and the bill stalled. The ban was favored by the Republican senators and the White House, but it was strongly opposed by the Democrats. The Democrats' position was that the victims of terrorist attacks should be compensated for economic damages, by being able to seek punitive damages against private companies. The Senate version of the bill, reflecting the Democratic position, was passed by a vote of 84-14. This vote showed that, in the Senate, the Democrats had a strong position while the Republicans were eager to finalize the legislation. President George W. Bush pressed the Republicans in the House to accept the Democrats' version of the bill, because this piece of legislation was necessary for the economy by protecting the insurance companies, creating a re-insurance fund. (*Congressional Quarterly Almanac 2002*, pp. C.14-C.15)

After the Enron Corporation collapse scandal when Enron employees lost their jobs and pension funds, both Congress and President Bush took position and worked together to enact The Corporate Responsibility Act. The bill was named after its two sponsors, the Democrat Senator Paul S. Sarbanes and the Republican Representative Michael G. Oxley. It was meant to set new standards for the accountant industry, because the fraudulent business practices, which led to the bankruptcy of this giant corporation, were not detected by the specialized accounting company. The bill stalled in the Senate until a new scandal surfaced. The telecommunications company WorldCom Inc. admitted reporting overestimated earnings by \$3.9 billion, and that gave the Senate version of the bill the momentum it needed. (*Congressional Quarterly Almanac 2002*, p.C.15) The final version of the bill was passed in the Senate with no opposition by a 97-0 vote.

The journey of this law supported by the White House was made possible by the bipartisan will to compromise and to negotiate a feasible solution. It also highlighted the ability of the Democratic senators to negotiate and successfully introduce amendments, i.e. tough measures against corporate fraud. The Corporate Responsibility Act also showed the strong impact of public opinion on the congressional activity and the importance of the political momentum. (*Congressional Quarterly Almanac 2002*, p.C.3) Following the Enron and the WorldCom Inc. fraud scandals, not a single senator dared say no and vote against the strict provisions of the bill, which passed with record speed.

The Enron scandal also gave momentum to the Campaign Finance Law that had been lingering in Congress since 2001. The passage of the bill was invigorated by the disclosure of information that the collapsing Enron Company had been a generous contributor to both political parties. Changing the electoral campaign finance law had been on the congressional agenda for more than ten years, being the subject of many political arguments. The 107<sup>th</sup> Congress continued the debate, and the Senate passed a bill in April 2001. The Democrats in the House had long advocated for a campaign finance reform, but when the Senate voted for it, some Democrats became reluctant to promote it, as it would ban large “soft money” contributions to the political parties by businesses and trade unions. In order to compensate, the campaign finance reform bill raised the limit for closely regulated “hard money” - contributions made directly to candidates. The House Republican Leaders and 12 Democratic representatives did their best to kill the bill, but the political momentum proved difficult to defeat and carried the bill to a successful conclusion. (*Congressional Quarterly Almanac 2002*, p.1.5, pp.C.4-C.5)

The election overhaul law was triggered by the close presidential elections of 2000, when old equipment led to possible misinterpretations of the voters' intentions. The outdated equipment opened the gate for bitter arguments as a result of unreliable counting. In Florida, two consecutive counts of cancelled ballots produced different outcomes, and the Supreme Court had to make a decision in order to end the controversy. The Court decided in favor of George W. Bush, who became the most contested U.S. president in modern times. In order to prevent further occurrence of similar controversies, Congress decided to help the States replace their outdated machines, invest in training the personnel, and implement new standards nationwide. Some provisions were made to prevent possible fraud. The law was the result of a long and tenuous work, a compromise achieved through bipartisan cooperation, since both parties understood that their positions were not contradictory. Republicans demanded strict identity control in order to prevent electoral fraud, while Democrats pressed for modernizing the technical equipment in order to make voting easier for minority groups. The Help America Vote Act of 2002 passed with bipartisan support in both chambers of Congress. (*Congressional Quarterly Almanac 2002*, p.14.3-14.4)

The Democrat-controlled Senate was instrumental in promoting a new farm bill, the Farm Security and Rural Investment Act of 2002, with provisions for a substantial funding increase for farming. This Democratic initiative aimed at replacing the provisions of the Freedom to Farm Act of 1996 that limited subsidies for agriculture. In the Senate, the divisions among senators were dictated more by regional affiliation and specific farming interests than by party lines. Several negotiations took place, with the result that more Republican senators were attracted to support the bill. On the Democratic side, the Senate Majority Leader Tom Daschle managed to persuade all but two Democratic senators to vote for the Senate bill. (*Congressional Quarterly Almanac, 2002*, p.C.11)

#### **4.4 The Unified Governments of 2003-2006**

The midterm elections of 2002 resulted in moderate but important Republican gains for Congress, and President George W. Bush's tenuous efforts for the Republican candidates during the campaign mobilized Republican sympathizers who led their party to victory. Even though tradition shows that the president's party loses seats in midterm elections, the terrorist attacks of 9/11 and the GOP aggressive campaign on national security issues resulted in gains for Republicans (six more seats in the House and two more seats in the Senate). Thus, the 108<sup>th</sup> Congress had a clear Republican majority, and unified government was again at work in Washington. At that time, President George W. Bush enjoyed a high level of popularity, but

the American public was still divided on issues pertaining to the domestic policy area. Democrats felt therefore that they had a mandate to oppose the GOP in the legislative fight over domestic issues.

In the 2003 State of the Union Address, President George W. Bush outlined a comprehensive plan for the economy. He proposed a change in the taxation policy of dividends, and he asked Congress again to make permanent the income tax reductions. He also asked for a Medicare reform to include prescription drug benefits for seniors. President Bush reiterated the need for U.S. energy independence and advanced a plan to improve energy production and efficiency. He also advanced a series of initiatives, all addressing domestic policy: the Clear Sky program to reduce air pollution, the Healthy Forest Initiative to prevent devastating wildfires, and the Faith-Based Initiative to provide financial support for charities. President Bush brought to the attention of Congress other issues from his political agenda as well: a medical liability reform, a partial-birth abortion ban, and legislation against human cloning.

In 2003, Congress passed four significant bills addressing domestic policy issues mentioned by President Bush in his State of the Union Address (Medicare reform, tax relief for capital gains and dividends, partial-birth abortion ban, and the healthy forest bill). Even though the first session of the 108<sup>th</sup> Congress unfolded under a unified government, partisanship and stalemate put its mark on much of the congressional activity in the domestic policy area. A number of significant bills on energy, highways and the minimum wage raise, as well as many presidential nominations, were blocked or delayed by filibuster actions in the Senate. The stalemate was often caused by the high partisan behavior of the George W. Bush administration and of the congressional Republicans who excluded Democrats from negotiations on important bills, with only a few exceptions. Moreover, Republicans abused the voting procedures and, against the rules, prolonged the 15-minute roll call vote to almost three hours, in order to get the Medicare bill passed by the House. However, partisan polarization did not prevent Congress from passing at high speed popular legislation like “do not call” registry or “do not spam” in a move to respond to public demand.

#### **4.4.1 Social Policies**

In 2003, President George W. Bush continued to promote his compassionate conservative agenda, and asked Congress to reform the Medicare program and to provide coverage for prescription drugs. The irony is that Democrats tried for many years, without success, to promote their version of reform and pass it through Congress, but it was the Republicans’



version that became law and one of their greatest legislative accomplishments. With the election campaign only one year away, the Republicans capitalized on a favorite Democratic issue, and prevailed after a long and controversial legislative battle.

The first step towards a Medicare reform bill was made when Congress provided \$400 billion for prescription drug benefits. Both chambers of Congress passed their versions of the bill on June 27, 2003. The bill passed in the House with a minimal majority (216-215), while the Senate version of the bill enjoyed bipartisan support. It was opposed only by the most conservative Republicans and by the most liberal Democrats. The moderates in both parties were won by the compromise proposal that the private sector would cover prescription drugs, while the federal government would compensate prescription drugs for the seniors who were not covered by insurance companies. Moreover, Democratic Senator Edward M. Kennedy supported the bill. His opinion was that at a time of increasing budget deficits, another opportunity for a \$400 billion Medicare expansion would not arise in the near future and that it might be easier to adopt the law in the present form and try to improve it later. (*Congressional Quarterly Almanac 2003*, p.C.6)

The following conference to reconcile the two versions of the bill was conducted by Republicans, who accepted only two moderate Democrats at the negotiation talks. The resulting version, as expected, was close to the Republican preferences; it angered many Democrats, and caused an unprecedented long voting procedure in the House. Instead of the 15-minute vote that was to start at 3 a.m. on November 22, the voting session lasted almost three hours, giving time for the Republican leaders to put pressure on their GOP colleagues in order to change their vote from 'nay' to 'yea'. Even President Bush called some reluctant Republicans on their cell phones pressing them to change their votes. (*Congressional Quarterly Almanac 2003*, p.C.18)

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 passed in the House with a vote of 220-215 at 5:51 a.m., and the controversial procedure led to a choir of Democratic angry protests. The Senate cleared the bill by a 54-44 vote soon after, and President George W. Bush could claim that he had fulfilled another electoral promise of 2000. He saw enacted an important issue from his political agenda, namely to add a drug benefit to Medicare, scoring a victory on Democratic ground. The law would provide \$400 billion over 10 years in drug benefits for the elderly and the disabled, enabling also the private insurance companies to play a new role in the Medicare program. However, the law was criticized for being too complicated for many retirees who could not fully benefit from the program. In contrast to the No Child Left Behind and the Medicare reform bill that were

enacted into law, the Social Security reform proposed by President Bush was not enacted either during unified or during divided governments. His proposal to privatize part of the Social Security system was too controversial to have safe passage in Congress.

#### **4.4.2 Tax Reductions and Fiscal Policy**

As mentioned in Subchapter 4.2, President George W. Bush successfully promoted his policy of tax reductions only when Republicans were in control of Congress. Therefore tax reduction legislation and enactments relevant for his fiscal policy between 2003 and 2006 are presented and analyzed in this subchapter. As soon as the GOP took control of Congress following the 2002 midterm elections, President Bush pushed again for a tax-cut bill and asked for an economic stimulus package of \$726 billion. Even though the moderate Republican senators agreed to a tax cut as a stimulus for the economy, the mounting budget deficit as well as the escalating war expenses led to the approval of only \$350 billion in tax reductions. The House adopted a \$550 billion bill, but Republican Senator Charles Grassley, Chairman of the Senate Committee on Finance, made known that he had promised a “tax reconciliation package” not bigger than \$350 billion. In a compromise solution mediated by Vice-President Dick Cheney, the final bill, Jobs and Growth Tax Relief Reconciliation Act of 2003, contained a \$330 billion tax cut aimed at capital gains and dividends over 11 years, plus a \$20 billion aid to states. (*Congressional Quarterly Almanac 2003*, p.C.6, C.13)

In 2004, President George W. Bush asked for two more tax cuts. Since 2004 was an election year, the president wanted to be able to say that he put more money in the pockets of the American people by implementing a wide array of tax reductions. The first of the two tax-cut laws enacted in 2004, the Working Families Tax Relief Act of 2004, extended tax relief for middle-class families beyond the end of 2004. It was an extremely popular measure favored by many members of Congress. It passed with strong bipartisan support in view of the incoming elections, even though the costs involved were certain to increase the already escalating budget deficit. Democrats were aware that the measure could harm middle-class families in the long run, because the budget deficit was not to be offset in any way. Yet electoral campaign reasons convinced a large number of congressmen on both sides of the aisle to support the bill. Six weeks before the elections, the popular bill passed with remarkable bipartisan support both in the House and in the Senate (339-65 and 92-3). (*Congressional Quarterly Almanac 2004*, pp.C.15-C.16)

The second tax-cut law of the year was the American Jobs Creation Act of 2004. The United States was under pressure from the European Union to end export subsidies.

Republicans took advantage of this “must pass” bill to elaborate a corporate tax bill, because the previous tax-cut laws of 2001 and 2003 were directed towards private persons. The new corporate tax bill would reduce tax contributions by \$137 billion over 10 years. The Senate version of the bill passed with bipartisan support, eliminating the disputed export subsidies and replacing them with corporate tax reductions. In order to gain enough support to help passage of the final bill through the House, a \$10 billion one-time down payment for the tobacco farmers was introduced in the bill to compensate for ending subsidies for the tobacco farming. Benefits for small interest groups like the native Alaskan whalers or the bow and arrow makers were also provided. This strategy worked, but it drew criticism from the House Minority Leader Nancy Pelosi who remarked: “This is a blatant example of corporate welfare, full of pork for the special interests. The oinking is so loud, the Republicans can’t even think straight.” (*Congressional Quarterly Almanac 2004*, p.C.17) As the bill contained a lot of incentives, it easily passed with bipartisan support. (280-141 and 69-17)

Mounting budget deficits estimated at more than \$400 billion for 2006, resulting from enormous military spending and from several substantial tax cuts, prompted the Republicans to initiate the Deficit Reduction Bill. The aim of this bill was to reduce the budget deficit by \$38.8 billion over five years by trimming from Medicare, Medicaid and student loan programs. (*Congressional Quarterly Almanac 2006*, p.1.4) Harry Reid, the Senate Minority Leader, called these measures “immoral and irresponsible” (Baker, 2006), but President Bush defended the bill. He said that it was not a cut from Medicare and Medicaid, as the bill only set a limit to the rate of growth of these programs. The Deficit Reduction Act of 2005 had a difficult passage through the House (216-214), while in the Senate the tie had to be decided by Vice-President Dick Cheney’s vote (51-50).

In 2005, congressional Republicans introduced a Tax Cut Reconciliation Bill in order to extend the tax cuts of 2001 and 2003 through 2010. President Bush had actually asked Congress to make permanent the tax reductions of 2001 and 2003. Congress did not grant his request, but extended the life of these enactments through 2010. The House version included tax reductions for capital gains and dividends, but it did not contain any protection for the middle-class taxpayers regarding the alternative minimum tax (AMT), a taxation system for the rich. The AMT provision was favored by Democrats and had support from moderate Republicans as well. The Senate version of the bill included the AMT protection provision because the tax cut extensions could not pass in Senate without the popular provision. Still, the \$70 billion upper limit imposed by the 2006 budget resolution forced Republican Senator Charles E. Grassley, Chairman of the Senate Finance Committee, to withdraw from the bill a

series of expiring tax reductions on education and research. He negotiated with the House Republican leaders to include these tax measures in a separate bill. (*Congressional Quarterly Almanac 2005*, p.15.3)

The final bill, the Tax Increase Prevention and Reconciliation Act of 2005, contained both the tax cut extensions and the AMT provision, and it passed in the House on a vote of 244-185. In the Senate, the bill could not be stopped by Democratic filibuster action, being protected as a budget reconciliation bill and it passed on a clear partisan vote of 55-44. Democrats went public with strong criticism of the bill. The influential Democratic Senator Edward M. Kennedy declared with respect to the Republicans' budget policy: "If you're already wealthy, then this budget will make you wealthier. But if you're a widow, orphan, or are disabled, you'll see a cut in benefits." (Baker, 2006) The public perception of the GOP budgetary policy was that Medicare and Medicaid funds were reduced in order to provide tax breaks for the wealthy. This added to the general feeling that the Republican unified government was drifting away from the genuine, basic needs of the American people.

#### **4.4.3 Anti-abortion Related Legislation**

The ban on the "partial-birth" abortion procedure was strongly favored by conservative Republicans and it was a priority on the presidential agenda. In fact, the Republican-controlled Congress had already passed legislation on the matter, but President Clinton repeatedly vetoed it (1995, 1997 and 1998). In 2003, when President George W. Bush signaled his endorsement, both the Senate and the House passed the bill without much struggle, in spite of attempts to introduce amendments. One of the amendments acknowledged the 1973 *Roe v. Wade* Supreme Court decision that abortions were legal in the U.S.A., but the amendment was removed in the House-Senate committee negotiations. President Bush signed the bill into law, but the Partial-Birth Abortion Ban Act of 2003 could not take effect at once as it was challenged in some courts of justice. (*Congressional Quarterly Almanac 2003*, p.C.9)

To harm a fetus while committing a crime against a pregnant woman is recognized as a separate crime in 29 states. Republican social conservatives in the House passed legislation to this effect as early as 2001, but it was not taken up for debate in the Senate at that time. The 108<sup>th</sup> Congress picked up again the theme of unborn victims of violence, after a pregnant woman, Laci Peterson, was killed late in pregnancy. This horrific crime committed in 2003 was widely covered in the media, and the bill was reintroduced in the House at the beginning of May 2003. The bill did not progress, because the social conservatives were finalizing the

“partial-birth” abortion ban, but it passed in the House by a 254-163 vote at the end of February 2004.

With the 2004 elections approaching, Senate Democrats decided not to oppose the bill, even though some of them were worried that it could open the possibility for a general ban on abortion. The provisions recognizing the legal status of the unborn child worried the abortion rights activists as well, but the defendants of the bill claimed that the Unborn Victims of Violence Act of 2004 explicitly made a difference between a crime of violence and an abortion consented by a pregnant woman. The issue was debated in the Senate, and the bill passed by a vote of 61-38. (*Congressional Quarterly Almanac 2004*, p.C.6) (Hulse, 2004)

The bankruptcy law overhaul offered the credit card companies the opportunity to pursue individuals after filing for bankruptcy protection and force them to eventually repay their debts. A discussion about this law is inserted in this subchapter because of the disputes around a controversial amendment concerning anti-abortion activists. The bill had actually cleared during the 106<sup>th</sup> Congress, but it had been pocket vetoed by President Bill Clinton, because the amendment introduced by Democrat Senator Schumer had not been included in the final version of the bill. The amendment, aimed at anti-abortion activists, did not allow them to avoid prosecution by filing for bankruptcy protection. (*Congressional Quarterly Almanac 2005*, p.C.4) In 2002, the amendment was changed to include all violent protesters; however, the bill stalled in Congress. All attempts in 2003 and 2004 to advance the bill containing the Schumer amendment led to nowhere. In 2005, Republicans could act more efficiently against this amendment due to their increased majority and the support of some conservative Democrat senators. The amendment was defeated in the Senate and the Bankruptcy Abuse Prevention and Consumer Protection Act passed on March 10, 2005.

#### **4.4.4 Energy Policy**

Regarding energy policy, Republicans and Democrats traditionally have divergent views. While Republicans favor increased production, Democrats emphasize conservation and increased efficiency. President Bush proposed an energy policy overhaul even in his first State of the Union Address in 2001. The energy policy overhaul was meant to encourage domestic production of coal, gas, oil and nuclear power. Increased fuel prices motivated both parties in Congress to address the energy issue, but the main aim of the bill was to reduce the U.S. dependency on foreign oil. The bill had previously stumbled on the provision proposed by President Bush in 2001, namely to open Alaska’s Arctic Natural Wildlife Refuge to oil

drilling. This provision, as well as another provision offering protection of MTBE<sup>4</sup> producers from lawsuits over water contamination, was vigorously opposed by a coalition of Democrats and moderate Republicans. These provisions were dropped from the final version of the Energy Policy Act of 2005, therefore the bill passed in Congress with bipartisan support. Previous legislation containing the two controversial provisions was passed by the House, but it could not survive filibuster action in the Senate. (*Congressional Quarterly Almanac 2005*, p.C.7, C.17)

Not long after the enactment of the Energy Policy Act of 2005 the oil industry suffered heavy losses as the result of the 2005 hurricane season. Oil production in the Gulf of Mexico and the oil refining capacity in the Southern states were seriously affected by hurricanes Katrina and Rita. Oil and gasoline prices increased even more, and the war in Iraq made the situation worse. In parts of the Gulf of Mexico drilling for oil was prohibited, and efforts to open new areas for drilling had been hampered by the state of Florida, among environmental concerns and a possible adverse impact on tourism. In 2006, the House passed a bill that allowed drilling for oil in most of the coastal waters of the U.S., as an increasing number of lawmakers wanted to reduce the U.S. dependency on foreign oil. The Senate version of the bill opened more areas for drilling, but only in the Gulf of Mexico. The position of the Southern states with respect to offshore drilling had changed considerably in 2006, because they would have received drilling revenues for the states budgets and for coastal restoration projects.

Negotiations in order to find a compromise between the House and the Senate version took a long time, but the 2006 midterm elections precipitated action at the end of the year. The Republicans lost the elections in favor of the Democrats, who were traditionally for a conservationist policy. In December, the House Republican leaders gave in to the intense lobbying of big oil and chemical companies, who urged them to accept the Senate version of the bill. Drilling operations in the Gulf of Mexico were attractive because of the proximity of the infrastructure. The drilling in the Gulf of Mexico provisions became part of an omnibus bill that also contained the tax extension provisions that had to be dropped from the tax cut reconciliation bill. The final version of the omnibus bill, the Tax Relief and Health Care Act of 2006 passed in the Senate on the last day of the session (*Congressional Quarterly Almanac 2006*, pp. 8.3-8.4)

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<sup>4</sup> MTBE stands for Methyl Tertiary Butyl Ether, which is a gasoline additive.

#### **4.4.5 Constituency-oriented Legislation**

While the previous subchapters analyzed the cooperation between the branches of the U.S. government when Republican-favored issues were enacted into law, this subchapter examines one bill that is relevant for the cooperation across the aisle in Congress. When local projects are at stake and local constituencies stand to benefit from federal money poured into local projects, party affiliation becomes less important. Congress stood united and forced President George W. Bush to compromise and to accept the allocation of more money for a new transportation bill. The surface transportation law expired in 2003, and Congress had struggled to reauthorize the highway programs for two years. The debates unfolded on two fronts. On one hand, President Bush put a spending ceiling of \$256 billion for transportation programs in 2003, while Congress would have liked to spend over \$300 billion. On the other hand, Congress members could not agree on how to distribute the money towards their constituencies.

In 2005, a compromise solution in the spending conflict between Congress and the White House was found when the president raised the spending ceiling to \$284 billion. Regarding the internal disputes in Congress, long negotiations were successful when an agreement on how to divide earmarks between the Senate and the House was reached in conference. More than 5000 earmarks were introduced in the final bill that provided \$286.5 billion for highway and transit transportation. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users was very popular with congressmen of both political parties because it contained so many earmarked provisions for local constituencies. It passed with an impressive majority in the House by a 412-8 vote, and the Senate cleared the bill with record speed, one hour later, by a 91-4 vote. (*Congressional Quarterly Almanac 2005*, p.C.8, p.C.17) The passage of this bill revealed how party lines are blurred when a bill that has potential impact on local constituencies is debated. Republicans and Democrats fought alike for more money, against the fiscal restraint request coming from the White House.

#### **4.5 The Divided Government of 2007**

The 2006 midterm elections gave voice to the deep dissatisfaction of the American people with the Republican-controlled government. Democracy had its say, and unified government had to make room for a divided government because Democrats won the congressional elections of 2006. The George W. Bush administration had to cooperate with a Democrat-controlled Senate during the 107<sup>th</sup> Congress as well, but the situation was quite different in 2007. President George W. Bush was no longer a popular president, while Congress had a

popular mandate to oppose him in matters of national security and in matters of domestic policy as well. The electoral campaign of 2006 crystallized the congressional agenda for the Democrats in the 110<sup>th</sup> Congress, and this Democratic agenda became the backbone of the legislative activity in 2007.

On January 23, 2007, President George W. Bush forwarded his policy agenda in the State of the Union Address, facing for the first time a Congress controlled by Democrats in both chambers. In the domestic policy area, President Bush proposed a series of measures addressing the problems of the American economy. He proposed to reduce the budget deficit by spending discipline. He also proposed a reduction in the number of earmarks and asked Congress to cooperate in order to reform Medicare and Medicaid, and save the future of Social Security. He advocated redirecting federal funds towards the States that were providing health insurance for all their citizens, and for a health insurance reform providing tax deductions for private health insurance. President Bush asked again for small businesses' association health plans, and a medical liability reform. He reiterated for the fourth time the necessity of an immigration reform, and asked Congress to reauthorize the No Child Left Behind law.

The president asked Congress to consider a comprehensive energy bill that would create conditions for increased domestic oil production, for increased production of renewable and alternative fuels, as well as for improved fuel economy standards for American cars. The Democrat-controlled Congress passed only one of President Bush's initiatives advanced in his 2007 State of the Union Address, namely the energy bill. Democrats were eager to promote their own priorities, but they favored many provisions in the energy bill as well. Huge oil prices made this bill an imperative.

Democrats wanted to make use of their dominant position in Congress, even though their leading position in the Senate was rather weak. The Senate was evenly divided (49-49) and the two independents were aligned with the Democrats. However, one of the independents, Senator Joseph I. Lieberman, often voted with the Republicans. The Democrats' position was further weakened by the illness of the Democrat Senator Tim Johnson, who was absent most of the year. (*Congressional Quarterly Almanac 2007*, p.C.3) From the first hours of the first session of the 110<sup>th</sup> Congress, the atmosphere was dominated by the eagerness of the Democrats to push their agenda "Six in '06," based on their electoral promises. In order to ensure a quick passage of the bills, they first changed the rules in the House, enforcing a time-limit for debates, thus preventing the opposition from advancing any



amendments. However, they soon found out that in the Senate the advancement of their initiatives was not going to be as smooth as in the House.

The minimum wage increase was one of the priorities of congressional Democrats included in the “Six in ‘06” initiative. Minimum wage was left unchanged since 1996, and during their electoral campaign, Democrats promised to increase it. The bill stipulated the gradual increase of minimum wage by more than \$2, from \$5.15 to \$7.25 per hour. The House passed a bill containing just the minimum wage increase. The Senate was encouraged by the Speaker of the House, Nancy Pelosi, to pass the minimum wage increase as a “clean bill” as well. However, the Senate Democrats were forced to add an incentive, a tax relief package, in order to secure the necessary Republican votes.

The strategy of adding the \$8.3 billion tax relief package for small businesses proved to be successful, and all but three Republican senators supported this version of the bill. However, the House rejected a tax cut of this magnitude, but a compromise version providing only \$4.8 billion over 11 years was agreed upon. The final version of the minimum wage bill, providing tax reductions for small businesses as well, was attached to the U.S. Troop Readiness, Veterans' Care Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. (*Congressional Quarterly Almanac 2007*, p.1.7)

Another important issue of the “Six in ‘06” Democratic initiative was the lobbying reform that was meant to disclose more information on the lobbyists’ activity and their fundraising, prohibiting members of Congress from accepting gifts and paid trips. Democrats had long accused the GOP of encouraging a culture of corruption in Congress, especially after lobbyist Jack Abramoff was convicted for corruption. His friend, Tom DeLay, was forced to resign from his position as the House Majority Leader, following inquiries into alleged fundraising irregularities.

Tom DeLay was later cleared of the charges, but the turmoil created the momentum in both parties to implement changes into lobbying rules and establish stricter ethics standards. Both the House and the Senate passed their own versions of the bill in January, but progress towards a reconciled version stalled. Senate Democrats wanted a broader reform concerning both ethics and lobbying. The final version of the Honest Leadership and Open Government Act of 2007 was informally reconciled between the House Speaker Nancy Pelosi and the Senate Majority Leader Harry Reid. It was passed with bipartisan support both in the House and in the Senate. (*Congressional Quarterly Almanac 2007*, p.C.9)

During their electoral campaign, the Democrats also promised to improve the loan conditions for students. The bill was introduced in the House in June, but the initial version of

the bill was met with veto threats from the White House, because the president favored subsidies to private lenders versus direct federal aid to the students. Funds for increased subsidies were already provided in the Fiscal Year 2008 budget resolution; therefore the bill gained the status of a reconciliation bill, protected against filibuster action in the Senate. The College Cost Reduction and Access Act was vigorously promoted by Senator Edward M. Kennedy and gained support from the American public. In the end, President George W. Bush signed the bill into law, as some but not all of the programs to which he objected were removed from the final version.

The College Cost Reduction and Access Act stipulated an increase of the federal grants for low- and middle-income college students, and a 50% reduction of the interest rates that had to be paid by the students. (*Congressional Quarterly Almanac 2007*, pp.1.8-1.9) At the same time, the law reduced the subsidies to the private companies providing student loans guaranteed by the federal government. The GOP lawmakers criticized these subsidy cuts, but Senator Edward M. Kennedy, Chairman of the Education Committee, replied that the bill was “directing funds to the students, not to the banks.” (Schemo, 2007)

A much needed energy bill had long been debated in Congress. In 2002, the 107<sup>th</sup> Congress took up the challenge to improve the Corporate Average Fuel Economy (CAFE) standards adopted in 1975. The plan was to mandate an improved fuel efficiency standard for the American vehicles in order to reduce gasoline consumption. Senators John Kerry and John McCain sponsored a proposal to improve the CAFE standard to 36 miles per gallon (mpg) by 2015, but the auto industry lobbied vigorously against the proposed standards. The bill did not progress, because the Senate and the House could not agree on a compromise version. (*Congressional Quarterly Almanac, 2002*, pp.C.11-C.12)

Five years later, Congress reopened the debates as oil prices increased dramatically following the war in Iraq and the devastation caused to the Gulf of Mexico oil industry by Hurricane Katrina. Democrats favored an increased fuel efficiency policy rather than an increase in production and subsidies to the oil industry. The fight between congressional Democrats and Republicans was generated by the proposal of reducing subsidies for oil and gas companies in order to finance research and development of alternative energy sources. The final bill, the Energy Independence and Security Act of 2007, mandated an improvement of the CAFE standards to 35 mpg by 2020, a proposal that was similar to the Kerry-McCain bill introduced in 2002. The 2007 bill also mandated the use of biofuels, as well as new efficiency standards for light bulbs and home appliances. However, the Democrats did not succeed in reducing or eliminating the subsidies for the oil and gas industry.

The fight against the reduction of subsidies took place in the Senate and it was led by the senators from the rich oil states in the South, who managed to block a conference on the bill, then filibustered the compromise version presented by the Democrats. In the end, the reduction of the subsidies for the oil and gas industry and the mandate for the production of electricity from renewable sources, both issues favored by the Democrats, were eliminated from the final version of the bill. The filibuster action of the Republicans was made possible by the Senate seat distribution, since the Democrats had only a narrow majority. Even though the bill was introduced in the House in January, it took Congress the whole year to clear it for the White House. (*Congressional Quarterly Almanac 2007*, p.1.7)

These domestic policy enactments were the result of cooperation and compromise between the Democrats and Republicans in Congress on one side, and between Congress and the George W. Bush Administration on the other. Even though the conflicts characteristic for divided party control materialized in seven presidential vetoes, and the Republican filibuster action was a constant threat, the Democrats in Congress accomplished most of their domestic policy goals. It is important to underscore how local projects and regional programs unite Congress even in times of divided government. Republicans and Democrats alike supported the water resources bill in defiance of President Bush's veto threats. The collection of more than 900 local projects was vetoed by the president because it was too expensive, but party loyalty dissipated and Congress easily managed to override the presidential veto. Local projects enjoyed the same preferential status during the unified government of 2005. Both Republicans and Democrats in Congress negotiated hard to obtain more funds for transportation and highway projects beneficial to their constituencies. However, President Bush and the Republican-controlled Congress managed to reach a compromise solution on the level of spending. During the divided government of 2007 no compromise was made, the president vetoed the water resources bill, but Congress prevailed in the end.

#### **4.6 Trade-related Legislation**

Both Republican and Democratic presidents of the United States promoted free trade policies, and President Bush, in his 2001 Stated of the Union Address, underlined the importance of free trade and the benefits of expanding trade in new markets. He asked Congress to grant him the fast-track trade authority. President Bush focused exclusively on the benefits of free trade for the American companies, but he did not say anything about potential problems like loss of jobs when companies move abroad, mounting trade deficit and even work ethics. The fast-track trade authority expired in 1994, and it was consistently denied afterwards to Democratic

President Bill Clinton by the Republican-controlled Congress. Its renewal was high on President George W. Bush's agenda. Even though the bill passed in the House in November 2001, the Democrats in Senate opposed the bill, worried about the reaction of environmental groups and labor organizations, among concerns regarding reduced job security of the American workers. The gridlock was overcome by the Democratic proposal to include a \$12 billion increase over 10 years of the Trade Adjustment Assistance (TAA) programs for the workers that might lose their jobs as a consequence of foreign competition. The proposal was initially rejected by the conservative Republican senators, but it was welcomed by the White House as an acceptable compromise, and the Trade Act of 2002 was cleared for the White House on August 1, 2002. The law gave the president the authority to negotiate trade agreements, requiring Congress to validate or reject them within 90 days, without the possibility of introducing any amendments.

The long and difficult path of this bill came to a successful completion because President Bush exercised strong pressure on the House Republicans to accept the Democratic TAA expansion compromise. The bill was an important pillar in the White House trade policy, and President Bush scored a significant victory in conditions of divided party control by backing the Democrats' position and pushing the Republicans to accept the compromise. On the other hand, the bill illustrated the strength of the Democratic senators, who had the majority in the Senate and successfully introduced the \$12 billion TAA aid expansion provision. (*Congressional Quarterly Almanac 2002*, p.C.13, C.14)

Extending free trade on the American continent had always been one of President George W. Bush's priorities. The fast-track trade authority approved by Congress in 2002 opened the door for negotiations regarding a free-trade agreement with five Central American countries and the Dominican Republic. The bill was met with resistance by Republicans and Democrats alike, especially in the House, among concerns for job losses in the textile industry and possible adverse effects of increased sugar imports. Many House representatives had to consider the interests of their own constituencies. Democrats were also concerned about the labor and the environment conditions in the Central American countries involved in the agreement. Many senators had the same concerns, especially regarding sugar imports, even though their worries with respect to the interests of their own home states were not as acute, because they do not have to face the electorate as often as the House representatives.

After long discussions, the White House managed to persuade the Republican senators to support the bill, which passed on a vote of 54-45. The passage of the bill in the House was even more difficult. The roll call vote was kept open until the House Republican leaders

managed to squeeze enough votes for the bill. It finally passed on a vote of 217-215. The difficult passage of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA) illustrates first of all the growing opposition to free trade agreements, partly caused by the results of the North American Free Trade Agreement of 1993 (NAFTA). It also highlighted the growing rifts between the president and the GOP representatives when regional and constituency interests were at stake. (*Congressional Quarterly Almanac 2005*, p.17.3)

The U.S.-India nuclear energy cooperation agreement was a high priority for the George W. Bush administration. It would allow the sale of American nuclear energy technology, materials and equipment for peaceful purposes. India enjoyed a high rate of development, and the Indian market was demanding more and more electrical energy. Nuclear power plants were the obvious solution for a reliable, cheap and clean supply. In addition, this deal would develop the U.S. relations with India, and it would shift away the focus of the American trade from China to India. The agreement would also open the Indian market for American high technology products, and the American economy would benefit accordingly.

Both the House and the Senate passed the final version of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 with a bipartisan vote on the last day of the session. It gave the president the authority to negotiate the treaty, but empowered Congress to have the final say in a joint resolution to accept or to reject the final agreement. It included provisions requiring the White House to inform Congress periodically regarding the progress of the negotiations. The bill had opponents in Congress among the Democrats, who claimed that the agreement would create a dangerous precedent and give an excuse to other countries to pursue nuclear ambitions. India did not sign the Treaty on the Non-Proliferation of Nuclear Weapons of 1970, and the bill stipulated that the agreement was to be cancelled if India made further atomic bomb tests. The bill also allowed the International Atomic Energy Agency (IAEA) inspections on U.S. nuclear sites with the understanding that India would also allow IAEA inspections. (*Congressional Quarterly Almanac 2006*, pp.10.5, C.7)

#### **4.7 Conclusion**

Significant legislation enacted during the first seven years of the George W. Bush administration in the domestic policy area was analyzed in this chapter. The social, the political and the economic conditions clarify why these laws were necessary at that specific moment in time. From the multitude of challenges facing the nation's lawmakers, only a

fraction might be enacted into legislation. The bills that were introduced, debated, amended and enacted into laws reflect the preferences of those who have the mandate to govern, while other initiatives, sometimes worthy to be enacted, are left in limbo in Congress or vetoed by the president.

During George W. Bush's administration, many valuable initiatives were delayed, postponed, or even abandoned due to lobbying from different interest groups, local and regional interests, or simply because the congressional agenda had other priorities. However, events with high coverage in the media often created the decisive momentum for a bill to win support in Congress and to be enacted into law by the president. In some cases, like the Enron scandal, the momentum was lost and the bill lingered in Congress until the impact of a new incident put the bill back on the right track. The synchronism of widely publicized events with the legislative activity of Congress reveals an important aspect of the legislative process, being just one facet of the complex web of interactions leading to the enactment of a law.

The dynamics of law enactment discussed in this chapter reveals the complexity of the governmental activity and shows how the relationship between the president and Congress changes when unified government makes place for divided government. Legislative initiatives can originate either in the White House or in Congress. President George W. Bush's legislative agenda, forwarded in the State of the Union Address at the beginning of each year, was a major source of significant legislation in the first years of his presidency. In this chapter we summarized his initiatives addressing domestic policy, derived from the State of the Union Address, and we isolated the initiatives that resulted in major legislation. It is interesting to see how this process changed over time.

During his first mandate, Congress followed President Bush's agenda, and many of the significant laws enacted at the time stemmed from his initiatives. However, both the congressional agenda and the presidential agenda were drastically altered following the 9/11 terrorist attacks and many initiatives were postponed. Still the following Congress, having a clear Republican majority enacted many of President Bush's initiatives. After his reelection, a series of mishaps took a toll on his popularity, and Republicans in Congress showed signs of independence or even of defiance. The relation of the president with Congress changed, and Congress passed less bills based on the president's initiative. After Democrats took control of Congress, only one significant law was passed from all of President Bush's initiatives, and even that law was a Democratic priority.

Following the legislative process presented in this chapter, we have seen that a bill having bipartisan support was enacted as a stand-alone bill, while more controversial bills

were either attached to an appropriation bill or passed as part of an omnibus bill. Popular bills that do not involve party ideology enjoyed a fast track in Congress, while bills pertinent for party ideology often resulted in confrontation and had a long and strenuous passage in Congress. They were subject to presidential veto threats and even presidential vetoes if the bill, or part of the bill, was in contradiction with President Bush's conservative ideology. The mechanisms at work in Congress, as well as the degree of cooperation and conflict between different factions, between Congress and the president, reveal the different paths a significant law would take when enacted in cooperation or in confrontation, in unified or in divided governments.

## **CHAPTER 5: NATIONAL SECURITY**

### **5.1 Introduction**

In the previous chapter, significant legislation addressing domestic policy during the George W. Bush administration was discussed within the social and political context of the time. This chapter addresses significant legislation pertaining to defense and national security. The questions of why and of how the significant legislation under consideration was enacted play a central role in the chapter. Answering the question of why significant legislation was enacted highlights the political context of the security concerns leading to these enactments. Answering the question of how significant legislation was enacted highlights the cooperation, and in some cases the conflicts, within Congress, as well as the relationship between Congress and the White House in times of divided or unified governments. The conflicts resulting in vetoed legislation will not be discussed in this chapter, as they were analyzed in Chapter 3.

The legislation analyzed in this chapter was selected following David Mayhew's criteria for identifying significant legislation enacted during the George W. Bush administration. In his study, Mayhew initially omitted the joint resolutions from his inventory of significant enactments. In the epilogue of the second edition of *Divided We Govern*, Mayhew(2005) regrets that omission and reevaluates his position, adding a new list of major joint resolutions. In this study, the inventory of significant legislation enacted between 2001 and 2007 includes two joint resolutions passed by Congress authorizing the use of military force in Afghanistan and Iraq.

President George W. Bush's positions concerning defense and national security, presented each year in the State of the Union Address, will be discussed throughout this chapter. It is interesting to see how his views, as well as the congressional agenda, were affected by the terrorist attacks against the United States. The 9/11 terrorist attacks play a central part in defining the major national security issues during the George W. Bush administration. This study does not focus on these attacks, but their implications and their consequences for legislation related to national security are taken into consideration. This chapter presents significant legislation relevant for national security in detail, the enactments being presented in chronological order.

### **5.2 President Bush's First Term in Office**

After the contested elections of 2000, George W. Bush started his presidency by presenting an agenda consistent with his electoral promises. In his 2001 State of the Union Address, he



focused on domestic policy issues and dedicated only a few words to foreign policy, trade and national security. It is important to examine his position at this moment, prior to the terrorist attacks of September 2001. The president advocated a smaller nuclear deterrent force as well as strategic missile defense development for the United States and its allies. He also expressed his determination to reshape the U.S. military forces, and promised all the funds necessary for defense and development of the Army, putting an end to President Clinton's policy of a continuous reduction of the military budget.

### **5.2.1 United States under Attack**

The terrorist attacks of September 11, 2001, changed the agenda of the U.S. government, and national security became the most stringent priority of the George W. Bush administration and of the U.S. Congress as well. On September 11, 2001, President Bush was visiting a public school in Florida, promoting the education reform bill "No Child Left Behind." He was informed of the attacks and left the school without speaking to the reporters. Within the hour the president was onboard the presidential airplane leaving for an unspecified destination. Vice President Dick Cheney was hastily evacuated to the White House bunker (Sanger and Van Natta Jr., 2001) Immediately after the attacks on the World Trade Center and the Pentagon, the Capitol Police evacuated Congress and the lawmakers were told to go home. The Speaker of the House of Representatives, Dennis Hastert, was taken to a safe location in Virginia, to a military bunker. The same evening, 200 Congressmen returned to the Capitol and had a brief meeting to show their unity, defying terror and the fear of further attacks. (*Congressional Quarterly Almanac 2001*, p.1.9)

Both chambers of Congress dedicated much of their activity to urgent national security matters. The fact that Senator James Jeffords left the GOP in June 2001, handing control of the Senate to the Democratic Party and reinstating a divided government in Washington did not play any role in passing emergency legislation. The impact of the September 11 attacks wiped out any barriers between the parties, and a united Congress acted in an extraordinary determination to work together in order to bring swift changes to defense and national security. Congress gave the George W. Bush administration all its support and financial means to counteract extremist terrorist organizations. Tom Daschle, the Senate Majority leader, declared: "We will take up the president's initiative with speed. We may encounter differences of opinion along the way, but there is no difference in our aim. We are resolved to work together." (*Congressional Quarterly Almanac 2001*, p.1.9)

Congress speedily passed five major laws concerning national security until the end of the year, all signed by the president without delay. On September 20, President Bush addressed both chambers of Congress in joint session, condemning the savage attacks on innocent American civilians on U.S. soil, and called for international cooperation for the War on Terror. He went even further and declared: "Either you are with us or you are with the terrorists," making no difference between terrorists and those who helped them. This statement displays a polarizing view of the world, a black and white picture where grey shades and nuances are ignored, where everybody is with us or against us, a picture of us versus them. His words represent a clear departure from his 2000 electoral campaign, which stated a policy of being "a uniter, not a divider." His speech on September 20, 2001, against the al-Qaeda terrorist organization, reinforced the Authorization for Use of Military Force joint resolution passed by Congress on September 14. It was an ultimatum to the Taliban regime in Afghanistan to hand over the terrorists who were responsible for the attacks.

Wanting to demonstrate its capacity for quick action, Congress in one day passed a \$40 billion emergency supplemental bill to pay for rebuilding the Pentagon and the city of New York, to assist the victims of the attacks and to launch the War on Terrorism. On September 14, the bill was introduced in the House, and passed by unanimous consent both in the House and in the Senate. It was signed into law by the president on September 18. The Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States made available \$10 billion for rescue operations, clearing the debris and rebuilding the sites damaged by the attack. Another \$10 billion was made available to President George W. Bush as discretionary spending provided that he informed Congress how he would use it, giving him in fact an almost unilateral control over this financial resource. The remainder of \$20 billion was made available upon request. (*Congressional Quarterly Almanac 2001*, p.1.9)

On September 14, 2001, Congress also voted a joint resolution "To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States." This Joint Resolution authorized the use of force against the al-Qaeda terrorist network based in Afghanistan, and against the Taliban regime that harbored the terrorist organization. It was the starting point of the search operations for Osama bin Laden, the mastermind of the al-Qaeda organization responsible for the attacks against the United States and its citizens.

The resolution was introduced in the Senate on September 14 and it passed by unanimous consent. It passed in the House by a vote of 420-1 on the same day. It is

interesting to note that in the House, the only vote against this resolution was cast by Democrat Representative Barbara Lee, whose antiwar message to Congress was a quote from Reverend Nathan D. Baxter's prayer for the leaders of the nation. She cited: "Let us also pray for divine wisdom as our leaders consider the necessary actions for national security, that despite our grief we may not become the evil we deplore." (*Congressional Quarterly Almanac 2001*, p.C.15) On October 7, 2001, U.S. and allied forces started the air strikes against the Taliban forces in Afghanistan, and one month later the coalition forces entered Kabul. The Taliban forces fled Kabul, but hid in the mountains and the hunt for Osama bin Laden and his terrorist network was on.

After the 9/11 terrorist attacks, air transportation safety measures became an urgent matter. Congress passed the Air Transportation Safety and System Stabilization Act providing \$15 billion for emergency assistance to the airline industry. This aid was aimed at the airline companies that suffered substantial financial losses due to the tragic events of September 2001. (Zuckerman, 2001) The bill also provided \$3 billion to be spent on airline safety, in order to enhance the security of air travel and to bring back the public confidence in air transportation. The Democrats tried to introduce assistance for the personnel displaced by the attacks, but the Republicans managed to block their efforts, and the bill passed by a vote of 356-54 in the House. In the Senate, the bill passed without amendments by unanimous consent. (*Congressional Quarterly Almanac 2001*, p.1.10)

A major post-9/11 enactment pertaining to national security was initiated by Attorney General John Ashcroft. It is one of the most important pieces of legislation for the time period under consideration. The law aimed at deterring and punishing those involved in terrorist acts, both in the United States and abroad, by providing the federal agencies involved in the fight against terrorism with broader investigative powers. It is known as the USA PATRIOT ACT OF 2001.<sup>5</sup> The law represented a mandate to perform nationwide surveillance and investigations, as well as secret searches and indefinite detentions of suspects of terrorism. Many saw it as an infringement on civil liberties, but Congress tried to achieve a balance between the necessity of extending the investigative powers of the authorities and the protection of civil liberties. The public protest against this infringement of civil liberties was weak in the climate of insecurity and fear of further terrorist attacks.

Attorney General John Ashcroft asked Congress for extensive powers to investigate crimes and acts of terrorism, and his requests triggered a series of negotiations. In the Senate,

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<sup>5</sup>Uniting and Strengthening America by Providing Appropriate Tools Requested to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001

the talks were held behind close doors and included White House representatives. The talks resulted in a bill containing most of the White House requests. In the House, after long talks, the members agreed to adopt the Senate bill, with only one important House contribution: In the subsequent law a number of disputed provisions would expire after four years. Making these provisions temporary showed that this bill was aimed at enhancing the ability of the specialized agencies to fight and deter terrorist activities and it was not an attempt to diminish civil liberties. It passed the House by a vote of 357-66, and the Senate voted 98-1 to pass the final bill. (*Congressional Quarterly Almanac 2001*, p.C.9, C.10, C.16, C.17)

In the aftermath of the 9/11 terrorist attacks, and with the ever present threat of other attacks, the Senate unanimously passed the Aviation and Transportation Security Act aimed at enhancing airport security, making provisions to transfer the responsibility for screening airline passengers and their luggage to federal personnel. A group of House Republican conservatives opposed the Senate bill, because they considered that it would increase the influence of the federal employee unions, traditionally favoring the Democratic Party. Negotiations advanced slowly, because pilots and trade unions were lobbying for federalization, while the House Republican leaders were pressing members to vote against the Senate bill. A series of incidents at international airports, some of them involving serious screening shortcomings, put a quick end to these discussions, and a compromise was reached. (Alonso-Zaldivar and Slater, 2001) The bill required airports to use federal screeners for two years, but allowed them to choose if they wanted to use contract workers after the mandatory two years. The American public reacted positively, and opinion polls showed that the majority of those interviewed favored a federalization of the screening personnel in American airports. (*Congressional Quarterly Almanac 2001*, p.C.17)

### **5.2.2 United States at War**

The second session of the 107<sup>th</sup> Congress' agenda converged with President George W. Bush's agenda on the issues pertaining to national security. Even though the Senate was controlled by Democrats, Congress backed President Bush in the vital national security issues of the year, ranging from strengthening homeland security to the war in Iraq. There were differences of opinion, but they were set aside in the end and compromise agreements were achieved after hard negotiations.

In the 2002 State of the Union Address, President Bush defined the security of the American people as the first priority of the government. He asked Congress to double the funds for homeland security in order to protect the Americans at home. In his speech,

President George W. Bush isolated the hostile totalitarian regimes of North Korea, Iran and Iraq and their terrorist allies and labeled them as “an axis of evil.” The president claimed that these countries were attempting to acquire weapons of mass destruction with the purpose of creating war, destruction, and chaos in the world. President Bush’s terminology recalls President Reagan’s famous words in 1982, describing the former Soviet Union as an “evil empire” in his speech to the House of Commons.

President George W. Bush underscored the importance of preventing terrorists from acquiring weapons of mass destructions, and reiterated the necessity for missile defenses. He also advocated a substantial defense spending increase for military operations in Afghanistan. Congress granted the necessary funds for military operations in Afghanistan, and authorized the preemptive U.S. military operations in Iraq. Congress also passed a bill creating an independent commission to investigate the intelligence shortcomings prior to the 9/11 attacks. In all these issues addressing national security, the spirit of cooperation finally prevailed, and significant legislation related to national security was enacted in spite of some partisan rhetorical confrontations.

The second session of the 107<sup>th</sup> Congress was instrumental in reshaping the American government by passing the Homeland Security Act of 2002, which created a new cabinet-level department known as the Department of Homeland Security. Its role was to coordinate all the 22 American security agencies involved in counterterrorism, but it did not include the CIA and the FBI. It was the biggest overhaul of the American government in 50 years, and it marked the beginning of a new chapter in protecting the American people against acts of terrorism.

The 9/11 terrorist attacks underlined the inability of the numerous security agencies to share information and act accordingly. In fact, previous terrorist attacks against American interests had been carried both abroad and on American soil undetected by the American secret services (1983 in Beirut<sup>6</sup>, 1998 in Nairobi<sup>7</sup>, 2000 on the USS Cole in Aden<sup>8</sup>, and 1993 at the World Trade Center, New York). In 2001, the most obvious failure was the lack of communication between CIA and FBI and sharing of intelligence data on terrorist activities. In 2000, the CIA possessed information regarding two of the 9/11 hijackers and their connection to al-Qaeda, but it did not inform the FBI. In addition, the CIA failed to share information about the connection of the two Saudi men with the terrorists responsible for the

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<sup>6</sup> U.S. Embassy and U.S. military barracks at Beirut Airport

<sup>7</sup> U.S. Embassy

<sup>8</sup> U.S. Navy destroyer USS Cole

attack on USS Cole in Yemen. As a result of the rift between foreign intelligence and domestic security, the FBI did not prevent the two Saudi men from entering the United States. (Risen, 2002)

Even on the ground, during frenetic rescue operations when the Twin Towers were on the verge of collapsing, basic communication was deficient, because the police radios were not compatible with the firefighters' communication equipment. Thus, the NY Police Department was not able to warn the NY Fire Department rescuers of the imminent danger of the World Trade Center collapse. In fact even within the Fire Department, communications between firefighters was deficient because of radio failures. As a result, the Fire Department lost 343 men. (Dwyer and Flynn, 2002) (Rashbaum, 2002)

The obvious need to unite the intelligence community led to the creation of the Department of Homeland Security, which was a Democratic initiative sponsored by Senator Joseph I. Lieberman. At first, the George W. Bush administration did not support the idea, but two weeks later, following the media disclosure of pre-9/11 intelligence failures, President Bush announced his proposal that was identical with the Democratic initiative. He declared on a nationwide TV address that "our government must be reorganized to deal more effectively with the new threats of the 21<sup>st</sup> century." (*Congressional Quarterly Almanac 2002*, p.1.7)

President Bush's proposal asked for flexibility in personnel management regarding the 170,000 federal employees, but his plan was strongly opposed by the Democrats, who saw this provision as an anti-labor move. With the 2002 midterm elections approaching, President Bush accused the Democrats of putting labor issues before national security, being "more interested in special interests in Washington and not interested in the security of the American people." (*Congressional Quarterly Almanac 2002*, p.1.7) These words prompted a violent reaction from Senate Majority Leader Tom Daschle, who shouted in the Senate: "You tell Sen. Inouye<sup>9</sup> he is not interested in the security of the American people. You tell those who fought in Vietnam and in World War II they are not interested in the security of the American people." (*Congressional Quarterly Almanac 2002*. p.1.7)

This bitter fight prevented the bill from being adopted before the elections. Both parties hoped that the public would take their side. The majority of the electorate sided with the Republicans, giving them control over the Senate and a larger majority in the House. The Senate passed the bill accepting the Republican proposal that the new department would make

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<sup>9</sup> Democratic Senator Daniel K. Inouye was a World War II veteran and an invalid.

its own rules regarding personnel policies, and the House cleared the bill by a voice vote on November 22. (*Congressional Quarterly Almanac 2002*, p.C.17)

Following the 9/11 terrorist attacks, President George W. Bush was determined to make sure that Iraq would not develop weapons of mass destruction. He insisted on the threat of the Saddam Hussein's regime for international security, even though no direct connection could be established between the al-Qaeda organization and the dictatorial regime in Baghdad. At the same time, President George W. Bush saw an opportunity to finish the "unfinished business" of the first Gulf War, and to correct his father's decision to let Saddam Hussein remain in power. (Wead, 2003)

President George W. Bush considered at first that he did not need congressional approval to commit military troops to Iraq, because Congress had already passed the Authorization for Use of Military Force against those responsible of the 9/11 terrorist attacks. However, in September he agreed to wait for congressional approval. In fact, a vote in favor of war was to be expected, because no congressman wanted to be labeled as an obstructionist with the midterm elections approaching, with the memories of the 9/11 attacks being still fresh in the minds of voters. President Bush actually needed bipartisan support in Congress in order to have a strong hand in dealing with the United Nations Security Council on the issue of the U.S. military intervention in Iraq.

The White House asked Congress for a resolution giving President George W. Bush broad authority to engage American troops in the Gulf region with the purpose of disarming Iraq of its weapons of mass destruction. Secretary of State Colin Powell and National Security Adviser Condoleezza Rice negotiated with Congress representatives to reach a compromise solution, because Congress was reluctant to hand over a blank check to President Bush. Congress proposed that war should be authorized by the UN Security Council, and that military action should be conducted by the United States as part of an international coalition. As President Bush could not reach a compromise with Senate Majority Leader Tom Daschle, he excluded him from the talks. (*Congressional Quarterly Almanac 2002*, p.C.17)

The George W. Bush administration negotiated with House Minority Leader Richard A. Gephardt, who agreed to a compromise resolution that gave the president a free hand to launch a war against Saddam Hussein's regime in Iraq without the support of the United Nations. In exchange, President Bush accepted congressional oversight, and he also accepted to limit the military operations to Iraq. Thus, according to the *Congressional Quarterly Almanac* researchers, Congress approved for the first time in U.S. history a preemptive military strike in the attack on Iraq. (*Congressional Quarterly Almanac 2002*, p.C.17) Given

the support of House Minority Leader Gephardt, the House passed the Authorization for Use of Military Force against Iraq Resolution of 2002 with a comfortable majority of 296-133, while the Senate voted 77-23 to clear the bill for the White House. Even though the bill passed with bipartisan support, some lawmakers were not convinced that the use of military force in Iraq was the best course of action and voted against the resolution.

In December 2001, Democratic Senator Joseph I. Lieberman and Republican Senator John McCain sponsored a bill that would empower an independent commission to investigate all governmental agencies and to analyze what should have been done in order to prevent the 9/11 terrorist attacks. The Independent 9/11 Commission's purpose was to find what caused the failures of the intelligence agencies and to improve their *modus operandi*, even though a joint House and Senate inquiry was unfolding at the same time; however, the congressional inquiry had its limitations and found it difficult to overcome the secrecy and the reluctance of the intelligence agencies under scrutiny. Initially, the idea to create an independent commission with broad investigative powers had been opposed by President Bush, who favored the ongoing congressional inquiry. Still, the people involved in the congressional investigation were seen to be too close to the intelligence community to leave no stone unturned. Public support for an independent commission, and the lobbying of the victims' family members revived the legislative process, and President George W. Bush changed his position and supported the idea. (*Congressional Quarterly Almanac 2002*, p.C.8)

The creation of the Independent 9/11 Commission was included as an amendment in the Intelligence Authorization Act for Fiscal Year 2003. The amendment was initially included in the Homeland Security bill, but because of partisan arguments the Homeland Security bill was delayed. The final agreement was reached in November, after the midterm elections and the Intelligence Authorization Act for Fiscal Year 2003 passed with strong bipartisan support. The independent commission was to be led by a chairman appointed by the president, while the ten commission members were to be appointed by Congress. (*Congressional Quarterly Almanac 2002*, p.C.16)

### **5.2.3 Iraq War**

The 2002 midterm elections reinstated a Republican majority on Capitol Hill and unified government in Washington. President George W. Bush campaigned hard for the benefit of his fellow Republicans against the Democrats, and he focused his message on national security and foreign policy issues. He opened the gate for the spirit of confrontation and partisanship that was to characterize the year, because he accused the Democrats of obstructing the



progress of the Homeland Security bill. The Democrats had a hard time campaigning on the economy, because they did not have a clear message and, in addition, they were divided with respect to taxation policies. (*Congressional Quarterly Almanac 2002*, p.1.8)

In the 2003 State of the Union Address, President Bush made a strong case for the war in Iraq, advocating the removal of a brutal dictator on the grounds that he violated the cease-fire agreement with the United Nations after the first Gulf War. Iraq had yet to prove that it destroyed all the weapons of mass destruction as agreed 12 years before. It was suspected at that time that Iraq still had the capability of producing bacteriological weapons. One has to remember that the anthrax attacks were still fresh in the minds of the Americans, and the 9/11 terrorist attacks still had a resonance in the hearts of the people. In the State of the Union Address, the president said that he had initiated Project Bio Shield, a program meant to make available vaccines and treatments against biological agents. Congress approved all the necessary funds for military operations in Afghanistan, and later in Iraq, but in 2003 no major legislation was passed with respect to national security.

On March 20, 2003, the military operations in Iraq, led by the United States and Great Britain, started without the approval of the UN Security Council, unlike the previous intervention in the Persian Gulf in 1991. The first phase of the operation was successful, and Baghdad fell after three weeks. President George W. Bush prematurely declared victory under the “Mission Accomplished” banner onboard the USS Abraham Lincoln. This staged publicity stunt was meant to mark a victory in the propaganda war. However, incidents in Falluja and Baghdad resulted in Iraqi casualties and propaganda war took a downturn. The war was prolonged and insurgency spread, resulting in an increased number of casualties on both sides.

#### **5.2.4 Abu Ghraib Prisoners Mishandled**

In December 2003, following a U.S. military operation, Saddam Hussein was found hiding in a foxhole and was captured. This significant development in the Iraq war had a brief positive influence on the public support for the war and for President George W. Bush’s job approval rate. (See Appendix 1 Figure 2) Progress was made in empowering the Iraqis to rule themselves, and on June 28, 2004, a provisional government was installed in Baghdad and took over some governing responsibilities. In spite of this positive development for the progress of democracy, the Abu Ghraib scandal was a serious step back in the fight for a civil society in Iraq. The way the American military personnel mishandled and humiliated the Iraqi prisoners at the Abu Ghraib detention center near Baghdad shocked the world.

In April, 2004, photographs showing naked Iraqi detainees, humiliated by U.S. guards made headlines in the media all over the world. Even though Defense Secretary Donald H. Rumsfeld and the Pentagon condemned the abuse and apologized to the detainees, serious questions were raised about the management of the war in Iraq. A Pentagon commission investigating the abuses concluded that they were not conducted with the intention to obtain information, but were the result of leadership failures. The military personnel involved in the scandal were prosecuted and sentenced accordingly. Donald H. Rumsfeld remained Defense Secretary following the strong support voiced by the White House. (*Congressional Quarterly Almanac 2004*, p.1.8) The Abu Ghraib scandal had serious consequences for the image and the reputation of the U.S. Army, and as expected, the effect was most severe in the Arab countries. As no weapons of mass destruction had been found, and therefore the motive of U.S. troops invading Iraq could not be sustained anymore, the George W. Bush administration lost credibility even more both at home and abroad. Public support for the war and the president reflected this, deteriorated and fell into a constant decline. (Kernell and Jacobson, 2006)

War in Iraq was the main topic of the 2004 State of the Union Address. President Bush defended his decision to invade Iraq and asked Congress for the necessary funds to finance the operations. Congress provided all the necessary funds, but denied the George W. Bush administration's request for discretionary spending. In 2004, Congress passed one bill addressing national security following the report issued by the Independent 9/11 Commission. The Intelligence Reform and Terrorism Prevention Act of 2004 substantiated the recommendation of the Commission and implemented a comprehensive overhaul of the American intelligence as well as the creation of a new Office of National Intelligence.

The 108th Congress waited for the 9/11 Independent Commission's recommendations to embark upon restructuring the American intelligence network. The report, issued on July 22, 2004, called for the creation of an office of national intelligence led by a cabinet-level director that would coordinate the American intelligence community. The report also recommended the creation of a counterterrorism center. The Senate passed a bill close to the Independent 9/11 Commission recommendations. The House version of the bill restricted the powers of the new national intelligence director, but contained increased measures against illegal immigration, including tougher procedures for quicker deportation. The stumbling block was the powers of the new intelligence director.

The Pentagon feared that surrendering control of its own intelligence agencies would impair the circulation of intelligence data relevant for military operations. The long

negotiations in the House were successful after Gen. Richard B. Myers, the Chairman of the Joint Chiefs of Staff, agreed to a compromise, and both President George W. Bush and Vice-President Dick Cheney put pressure on the House Republicans to finalize the bill. This strategy is a good example of President Bush's method of non-interference in the beginning of the legislative process, followed by strong political pressure in the final stages of the negotiations when success was within reach. The final version of the bill passed with bipartisan support. (*Congressional Quarterly Almanac 2004*, p.B.3, p.C.11, p.C.16)

### **5.3 President Bush's Second Term in Office**

The 2004 elections gave President George W. Bush a second term in office and Republicans gained even more seats in both chambers of Congress. However, scandals, general dissatisfaction with the way the Iraq War was managed, rumors of secret CIA detention centers abroad and torture allegations added to the unsatisfactory response of the federal authorities to the devastations caused by Hurricane Katrina. All these drawbacks contributed to the general feeling of disappointment and discontent with President George W. Bush and his administration.

The post-electoral optimism and the sense of fulfillment in the GOP at the beginning of the year faded away, as ethical scandals involving House Majority Tom DeLay further tainted the public image of the GOP. At the same time, Republicans in Congress lost interest for maintaining party coherence for several reasons. First of all, President George W. Bush had just been reelected; therefore he was no longer going to face the electorate. As post-war experience shows, second term presidents' leverage with Congress is diminished. Moreover, his popularity was in constant decline and congressional Republicans had no incentive to adhere to his policies. Republicans in the House were thinking more and more of the needs of their constituencies as time went by and the pressure of the 2006 elections started to be felt. At the same time, two thirds of the senators were not due for reelection; therefore they did not necessarily follow the partisan line and acted in a more independent way. All these factors contributed to the emergence of rifts in the Republican-controlled, unified government in the second half of the year. These rifts deepened in 2006 with devastating consequences for the Republicans in Congress.

#### **5.3.1 First Rifts in the Unified Government – Republicans Oppose the White House**

President Bush's State of the Union Address at the beginning of the year displayed an evident sense of optimism and pride for the achievements in homeland security matters. His speech

was heavily loaded with rhetoric promoting democratic values in the world, especially in the Middle East. Much of the president's address can be seen as a report on what he considered a progress of the War on Terror. Yet realities on the ground and the ever-growing number of American lives lost in Iraq were far from the positive image conveyed by the president in his speech. Engaging troops in Iraq was portrayed by President Bush as fighting the vital War on Terror at the very source of terrorism and not on American soil. At the same time, he pointed out that the American troops' operations would gradually be limited to a supporting role and the weight of the military operations would be transferred to the Iraqi security forces.

On the ground, insurgent groups and suicide bombers increased their attacks and the conflict began to degenerate into sectarian violence. In the United States, reports of prisoners' abuse in CIA secret detention centers and in military prisons eroded the reputation and the credibility of the George W. Bush administration. The secrecy of the administration with respect to the war on terrorism prompted a strong reaction in Congress from Democrats and Republicans alike. Congress required regular reports on the progress of the war and on the prospects of reducing the number of troops in Iraq. (*Congressional Quarterly Almanac 2005*, p.1.7) A strong Republican stand came from Senator John McCain. He introduced an amendment condemning torture and degrading treatment of prisoners that was supported by the majority of congressional Republicans against the White House. President George W. Bush efforts to persuade Senator McCain, himself a Vietnam veteran and a prisoner of war, to reconsider his amendment were unsuccessful. The amendment passed with overwhelming bipartisan majority, and the confrontation between congressional Republicans and the White House deepened.

The problem of humane treatment for detainees suspected of terrorism had been highlighted by the Abu Ghraib scandals. The debates around the Guantanamo Bay inmates' legal rights, as well as the so-called enhanced interrogation techniques and the Geneva Conventions reinterpretation, catalyzed the action of the U.S. Congress towards a ban on torture. The George W. Bush administration strongly opposed a bill restricting or interfering with interrogation procedures of suspected terrorists, claiming that it would have a negative impact on the War on Terror. Senator McCain introduced the bill banning torture or degrading treatment of detainees as an amendment to the 2006 Department of Defense Appropriations Act, triggering a veto threat from President Bush.

The Senate agreed to the amendment in October, showing bipartisanship by a vote of 90-9. In the House, more than 100 representatives sided with Senator McCain against the White House, and voted in favor of the amendment 308-122. In addition, the Senate and the

House agreed to attach the amendment to the Defense Authorization bill as well. The George W. Bush administration put a lot of pressure on Congress and especially on Senator McCain in order to take the CIA out of the incidence of the amendment. However, the White House could neither afford a presidential veto that had strong chances of being overridden by Congress, nor a stalemate regarding a defense appropriations bill in times of war. The president changed tactics and signed the bill into law, but two weeks later he issued a signing statement declaring that in his capacity as commander in chief he could disregard certain provisions of the law in order to prevent further terrorist attacks. (See Chapter 3, subchapter 3.4)

The passage of the McCain amendment in spite of the White House opposition revealed the growing discontent with the way the War on Terror was conducted, and underlined the growing confrontation between the president and the Republicans in Congress. At the end of the year, Congress acted in defiance towards the White House, and attached the McCain amendment to the defense appropriation bill with an overwhelming majority, in spite of President George W. Bush's strong opposition. The GOP acted united in 2002, in times of divided government, but started to show fissures that became more and more apparent in 2005, when unified government was making the rules in Washington.

### **5.3.2 “Do-Nothing” Congress on the Way Out**

In 2006, the rifts in the unified Republican government, already visible in the second half of 2005, deepened considerably. Senior Brookings' scholars Thomas Mann and Norman J. Ornstein (2006) called the 109th Congress “the broken branch,” because it failed to fulfill its responsibilities, it neglected congressional oversight and allowed the expansion of presidential powers at its own expense. The rifts between Republican senators and Republican representatives were caused by their divergent interests, because the approaching elections affected the representatives more and the senators less. These divergent interests hampered the passage of the budget resolution and some appropriation bills could not be finalized. The rifts between Congress and President George W. Bush deepened after Senator McCain's amendment was passed as part of the FY 2006 Defense Appropriation Bill. The signing statement issued by President Bush in January 2006 did not make things any better.

While the spirit of unity of the Republican-controlled, unified government was falling apart, President George W. Bush focused his message of the 2006 State of the Union Address on issues pertaining to national security and the war in Iraq. He pleaded against a hasty retreat from Iraq, because such a move would have opened the possibility for radical Islam to take a

foothold in Iraq. President Bush claimed that retreating from Iraq at that moment meant moving the battlefield to American soil. He claimed, therefore, that the United States enjoyed a stronger security at home as a result of the war efforts in Iraq and Afghanistan. He also spoke about reconstruction in Iraq and building up a modern economy. The irony is that in his 2000 electoral campaign President Bush pledged not to follow in President Clinton's footsteps regarding nation-building in areas of conflict. In 2006, President George W. Bush mentioned for the first time the possibility of reducing the number of American troops in Iraq, but he left the decision to the military commanders. Basically, his message was that his strategy in Iraq remained unchanged.

Speaking about home security, President Bush asked Congress to reauthorize the Patriot Act. The president declared that he had authorized, as commander in chief, a terrorist-surveillance program monitoring international communications in order to gather information about al-Qaeda operatives. After vigorous debates, Congress did reauthorize the Patriot Act, making 14 of its provisions permanent and reauthorizing two other provisions for another four years. (*Congressional Quarterly Almanac 2006*, pp.16.9-16.10) Regarding the NSA terrorist-surveillance program, the House passed a bill providing legal support for it in spite of bipartisan opposition, but the Senate did not consider the bill, and the initiative was abandoned. In fact, a federal judge had already ruled that the NSA surveillance program was unconstitutional. (*Congressional Quarterly Almanac 2006*, p.C9)

Another situation that opposed Congress to the White House was the sale of operations at six major U.S. ports to a Dubai-based company. Congressmen from both parties vigorously criticized the deal that had been approved by the George W. Bush administration, and moved to revoke the sale. President Bush threatened to veto any bill to that effect, but Congress could not be stopped among public fears and national security concerns. The company withdrew its bid and the deal was revoked. The implications for the U.S.-UAE were judged to be minimal, but the public image of the George W. Bush administration further deteriorated. (Weisman and Graham, 2006) Consequently, congressional Republicans started to dissociate themselves from President George W. Bush. Moreover, Republican representatives faced tough reelection campaigns at the end of the year and had to answer to their constituencies, while President Bush had already been elected for a second term in office. It is also important to remember that his popularity plummeted following the public dissatisfaction with the mismanagement of the war in Iraq. (See Appendix 1 Figure 2)

As war in Afghanistan and Iraq continued, more and more suspects, terrorists and individuals that helped the terrorists were captured by the allied forces, and many of them

were detained at Guantanamo Bay, Cuba. The military tribunals created to try these so-called enemy combatants were challenged by the Supreme Court that decided that President George W. Bush had overstepped his authority in creating them. As a result, President Bush asked Congress to pass a bill providing legal framework for the military tribunals, but the rifts between the Republicans in Congress and the George W. Bush administration became evident again. Three Republican senators, John W. Warner, John McCain, and Lindsey Graham, all three war veterans, opposed the reinterpretation of the Geneva Conventions on the treatment of prisoners of war. However, many Democrats in the Senate supported the bill, because they dared not create conditions for setting terrorism suspects free with the midterm elections approaching. A compromise was reached, and the resulting bill endorsed President Bush's request, although a provision allowing secret evidence in these courts was not included. The Military Commissions Act of 2006 passed in the Senate on a vote of 65-34 at the end of September, then in the House on a vote of 270-150. Some Democrats in Congress criticized the bill and promised to try to change it later on. (*Congressional Quarterly Almanac 2006*, p.C.14)

Inside Congress, the ethics scandals involving House Majority Leader Tom DeLay led to his resignation. The situation was in fact exacerbated by more scandals affecting the Republicans in Congress. Right before the 2006 midterm elections, Republican Representative Mark Foley had to resign following disclosures of inappropriate e-mail messages sent to a former teenage congressional page. These scandals added to the public feeling of frustration with the lack of progress in Iraq and had serious consequences for the congressional Republicans who lost the 2006 midterm elections in favor of the Democrats. The outcome of the elections can also be seen as the voters' strong message of disapproval with President George W. Bush's policies. The Republican unified government was ousted. Democrats captured both chambers of Congress for the first time after 12 years, and divided government became the hope of the nation.

### **5.3.3 Open Confrontation between Congress and the President**

Democrats won the 2006 midterm elections and took control of both chambers of Congress, campaigning hard against the war in Iraq. Their task was helped by the obvious mismanagement of the military operations in Iraq, as well as by the fact that the civil reconstruction of the Iraqi economy proved to be a difficult undertaking. At the same time, the scandals marring congressional Republicans contributed to the shift of the balance of power in

Congress. The will of the American people put President George W. Bush in the uncomfortable position of having to cooperate with a Democrat-controlled Congress.

Even before his State of the Union Address, President George W. Bush announced a change of strategy in Iraq by deploying more than 20,000 additional soldiers, in an effort to contain the insurgency and to make Iraqi towns and villages safer. In this way, the year started with a direct confrontation between President Bush and the Democrat-controlled Congress. The Democrats had a clear mandate from the American electorate to establish a timetable for ending the military operations in Iraq and bring the troops home. Since Democrats had an extremely narrow majority in the Senate, the only way they could enforce a timetable was to attach it to an appropriation bill. Thus, the emergency supplemental appropriation bill for the war came with strings attached, namely a timetable for troop withdrawal. As it was shown in Chapter 3, President Bush vetoed the bill, and Democrats did not manage to gather enough votes to override his veto. In the end, Congress had to provide funds for the war, without a timetable attached. Many other attempts to enforce a timetable for troop withdrawal from Iraq were defeated in the Senate by Republican filibuster action.

In his 2007 State of the Union Address, President Bush spoke at length about the situation in Iraq and the escalation of sectarian fights, pleading for the “surge,” the new strategy of increasing the number of U.S. troops in Iraq. The president underlined the necessity of denying terrorist organizations safe havens in Iraq and spoke against a hasty retreat of the American forces. He asked Congress to support the surge and provide the necessary funding for the military operations, making use of the well-known rhetoric of supporting the troops on the battlefield. Later in the year, Congress did provide funds for the military operations and for the veterans’ care.

Veterans’ care was actually a painful subject and a shame for the U.S. government, because wounded young soldiers were treated in medical facilities plagued by neglect, and often suffered bureaucratic delays, even at Walter Reed Medical Center for military veterans in Washington. In a series of articles starting on February 18, 2007, the *Washington Post* revealed the shabby conditions in which the returning wounded war heroes received medical care. It was embarrassing for the Bush administration to learn from the *Washington Post* the painful conditions in the veterans’ medical center that had just been visited by President George W. Bush on Christmas Eve. ([Priest and Hull, 2007](#))

National security was a top priority on the Democrats’ agenda, the first of the six themes of their campaign document “A New Direction for America.” Implementing the recommendations of the Independent 9/11 Commission was therefore the first bill in the “100-



hour” Democratic schedule of the House. It was in fact the major enactment of the year pertaining to national security. The Independent 9/11 Commission was set up to investigate the shortcomings of the American intelligence system that led to the failure to detect and prevent the terrorist attacks on the American soil in September 2001. The commission presented its conclusions and its recommendations in a public report released in July, 2004. Many of its recommendations were implemented in the Intelligence Reform and Terrorism Prevention Act of 2004, but some important security issues were left unaddressed. The Democrat-controlled 110<sup>th</sup> Congress made its priority to address these issues.

The House rapidly passed the Implementing the Recommendation of the 9/11 Commission Act of 2007 in January, as part of its “100-hour” agenda. The bill provided funding to update communications equipment for first responders, as well as supplementary security funds for states and cities considered as potential targets for terrorist attacks. It also required comprehensive screening for cargo shipped on passenger planes and addressed port security as well. Some House Republicans supported the bill, which passed by a vote of 299-128. However, President George W. Bush threatened to veto the bill, because it contained a provision giving more labor rights to airport security personnel. The White House opposed it, claiming that the provision had not been recommended in the report of the 9/11 Commission. The Bush administration argued that it would weaken the authority of the Transportation Security Administration (TSA) and its flexibility in addressing ever-changing threats.

The progress of the bill stalled until the Democrats agreed to accept a compromise and did not press any further for the labor provision. The final version of the bill was negotiated between the House and the Senate delegates, and passed with bipartisan support. Implementing the 9/11 Commission’s recommendations answered the necessity to further tighten transportation security both on U.S. soil and on international routes. The bill was supported by Republicans and Democrats alike in the spirit of bipartisanship and compromise, even though the White House initially objected to some provisions. For this particular national security issue, the divided government of 2007 worked efficiently in spite of inherent disagreements and finalized the bill, putting the security of the American people above party interests and ideology. (Hsu, 2007) (*Congressional Quarterly Almanac 2007*, p.1.4) (New York Times Editorial 2007a, b)

## **5.4 Conclusion**

In this chapter major legislation addressing national security and defense issues was analyzed. The terrorist attacks of September 2001 redefined both the presidential and the congressional

agenda making national security the absolute priority of the United States government. This chapter followed the major events of the first seven years of the George W. Bush presidency, events that triggered the enactment of significant legislation. The congressional mechanisms of cooperation and sometimes conflict, as well as the relations between President George W. Bush and the U.S. Congress were highlighted, because they are vital for the understanding of how major legislation was enacted. While in the domestic policy area party ideology and partisanship characterized the governmental activity in Washington, in matters of defense and national security the dominant features were cooperation, compromise and bipartisanship.

As shown throughout this chapter, the president-Congress relationship was characterized by cooperation, with very few exceptions. As commander in chief, President George W. Bush obtained from Congress most of what he asked for. During his first term in office, President Bush enjoyed support from Congress, especially after the 9/11 terrorist attacks, even though the Senate was controlled by Democrats during the second half of 2001 and during 2002. Divided government did not result in a stalemate with respect to national security and defense issues. In fact, the urgency resulting from the crisis situation after 9/11 took precedence over intra-party divisions, intra-congressional divisions, and any disputes and differences of opinion between the legislative and the executive branches of the government. In matters of legislation addressing national security, the balance between civil liberties and security concerns was clearly tilted in favor of national security because fear of more terrorist attacks weakened the voices of protesters.

During President's Bush's second term in office, mismanagement of the war in Iraq, the fading public support for the war, and ideological differences involving the treatment of prisoners of war and suspected terrorists led to a growing conflict between President George W. Bush and Congress. The conflict transcended party lines: Democrats and Republicans alike opposed the president and his administration, so the demarcation line was between Congress and the George W. Bush administration. The conflict developed after Democrats took control of both chambers of Congress following the midterm elections of 2006. The Democrat-controlled Congress cooperated well with the George W. Bush administration for implementing the remaining recommendations of the Independent 9/11 Commission. However, the efforts of Congress to impose a timetable for U.S. troop withdrawal from Iraq were either stopped in the Senate or were met with a presidential veto.

Was the George W. Bush administration successful in making America safer? In matters of homeland security the fact that no major attacks have been carried on American soil tilt the balance in favor of a positive answer. The same can be said about the war in

Afghanistan that ousted the Taliban regime from the country and disrupted the al-Qaeda network and its capability to attack the United States. However, in spite of sustained efforts, Osama bin Laden eluded capture and is still at large. With respect to the Iraq War, the answer is not so clear. No weapons of mass destruction were found, and even though Saddam Hussein was captured and tried for his crimes, the war was mismanaged and not enough troops were deployed on the ground, resulting in prolonged house-to-house guerilla fights. Insurgent groups from neighboring Arab countries were drawn into this conflict that resulted in thousands of American lives being lost, while the subsequent violent sectarian fights resulted in even more casualties among Iraqi civilians. The United States lost the propaganda war and therefore an increased number of insurgents were willing to join the al-Qaeda organization and fight the Americans. From this point of view the Iraq War did nothing to increase the safety of the United States and its citizens.

## CHAPTER 6: CONCLUSION

This study examined the legislative output and the relations between the executive and the legislative branches of the U.S. government during the first seven years of the George W. Bush administration. The George W. Bush administration was installed in 2001 while Congress was controlled with a narrow majority by Republicans. A few months later, following Republican Senator James Jeffords' defection, the GOP lost control of the Senate and the administration became part of a divided government. The United States came under attack on its own soil on September 11, 2001, and that put America on a wartime footing. In November 2002, the GOP regained control of the Senate, and the George W. Bush administration had the benefit of a unified government for the next four years. In November 2006, the American people put the Democrats in control of Congress, and divided government put its mark on the last two years of George W. Bush's presidency. These alternations between unified and divided governments during the George W. Bush years allow a comparative study of the legislative output and of the relations between the executive and the legislative, depending on the conditions of party control.

An inventory of significant legislation enacted between 2001 and 2007 was compiled using David Mayhew's method of selection. Mayhew singled out the significant legislation enacted between 1946 and 1990 in a "Sweep One" process using contemporary sources reinforced by a "Sweep Two" revalidation made from a historical point of view. For the 1991-2002 legislation, added as an epilogue to the second edition of his book *Divided We Govern*, Mayhew could not use this retrospective view. This reevaluation approach was not feasible for this study either, as not enough time has passed to gain a historical perspective. Therefore, the law inventory selected using congressional activity wrap-up articles from the *New York Times* and the *Washington Post* was validated using the annual compilation made by the *Congressional Quarterly* analysts for each year.

This study shows that during George W. Bush's first seven years in office, divided governments were at least as productive as unified governments with respect to significant legislation; 2002 was actually the most productive legislative year, even though the Senate was controlled by Democrats. However the legislative output of 2002 and the last four months of 2001 was clearly influenced by the crisis situation created by the 9/11 terrorist attacks. Therefore an alternative compilation of significant legislation was made by setting aside all the enactments dealing with this extraordinary situation. The resulting inventory of significant

legislation showed no significant difference between the legislative output of divided governments compared with the legislative output of unified governments.

The data compiled in this study verifies David Mayhew's theory that divided governments do not have a smaller legislative output compared with unified governments, and that conflict inherent in times of divided governments does not affect the volume of significant legislation enacted. Looking into the vetoed legislation, the situation is exactly opposite. President George W. Bush vetoed only one bill under a unified government and seven bills in 2007, when Congress was controlled by Democrats. Thus, in 2007, the conflict between the executive and the legislative branches of the government resulted in an increased number of vetoed bills. Still, during the second half of 2001 and during 2002 when the Senate was under Democratic control, the impact of the terrorist attacks of September 11, 2001, introduced an element of crisis in American political life that united Republicans and Democrats in Congress to support the George W. Bush administration in the fight against terrorism. Evidently, partisanship and conflicts made room for cooperation in enacting the emergency legislation required, and no presidential veto materialized.

The increased number of vetoed legislation during 2007 supports political scientists' traditional view that divided government often results in stalemate. This study shows that the cooperation level which can be measured by the significant legislation output was not affected by which party was in control of Congress, while the level of conflict measured by the vetoed legislation was substantially increased when divided government replaced the unified government. One can say that both lines of thought may be reconciled and proven to be right, because David Mayhew did not examine the vetoed legislation, while the pundits expressing the traditional point of view focused on conflict, and neglected the cooperation within Congress and between Congress and the executive.

In this study, the legislative process was scrutinized focusing on the conflicts or the cooperation between the two major parties in Congress, and between Congress and the George W. Bush administration. President Bush claimed to be a uniter and a promoter of bipartisanship, but in times of unified government he proved to be a divider and to promote partisanship. Partisanship and arrogant attitudes might have repercussions in future situations because elections are held every two years and the balance of power in Congress might tilt in favor of the opposition party. Partisanship was the defining attitude of the unified governments during George W. Bush's administration, and the cooperation with the Democrat-controlled Congress in 2007 proved to be difficult. While the new elected 110<sup>th</sup> Congress had a mandate to impose a timetable for the U.S. troops' withdrawal from Iraq, the

Bush administration initiated a surge of troops. The cooperation and the will to compromise that could be seen in the first years of George W. Bush's presidency were hardly present in 2007.

This study used David Mayhew's method of selecting significant legislation and tested his theory with respect to the legislative output during unified and divided governments, but it extended the research to vetoed legislation and signing statements. In order to highlight the level of conflict between the executive and the legislative branches of the government, the study analyzed the vetoed legislation as well as President George W. Bush's controversial practice of using signing statements to challenge certain provisions of laws. President Bush abused his privileges and extensively used signing statements to adjust legislation according to his own preferences. The number of signing statements issued was inversely correlated with the number of vetoed bills. The great number of signing statements issued during unified governments indicates that President Bush used signing statements in order to avoid open conflict with the Republicans in Congress. In times of divided government, he simply turned to presidential veto, when the legislation passed by Congress was in contradiction with his own political views.

The State of the Union Address provides an insight into the presidential agenda for each year. The extent to which Congress responded to the wishes of the President George W. Bush revealed the level of cooperation between Congress and the president. The level of cooperation in Congress could be detected when legislation was passed with bipartisan support. In the same manner, votes cast along party lines gave a verdict of partisanship and non-cooperation in Congress. In matters of national security, both parties in Congress cooperated, albeit with a few exceptions, while in the case of domestic policy legislation, partisanship was dominant for most of the congressional activity.

This study showed that the George W. Bush administration had a reasonably good relation with Congress in matters of domestic policy during his first term in office, irrespective of conditions of party control in Congress. President Bush did not have to veto any bill, even though he made extensive use of veto threats and presidential signing statements. During his second term in office, the president–Congress relation deteriorated gradually, and Congress showed signs of independence even though it was still controlled by Republicans. As a result, President George W. Bush had to use his veto right for the Stem Cell Research Enhancement Act of 2005. After Democrats took control of Congress in November 2006, the presidential agenda presented in the State of the Union Address was sidelined in favor of the Democratic “Six in 06” agenda, with the result that in 2007, only one

of the president's initiatives was passed by Congress. In 2007, President Bush's relation with Congress changed to open conflict, and the president had to veto seven bills, out of which Congress managed to override only one.

In matters of national security, the impact of the terrorist attacks of September 2001 resulted initially in a strong cooperation between President George W. Bush and Congress. This lasted longer than the cooperation in matters of domestic policy. As a rule, Congress supported President George W. Bush, and granted most of his requests with respect to funding the ongoing military operations. However, in 2007 the Democrats' attempt to impose a timetable for troop withdrawal from Iraq was met with a presidential veto. During his first term in office, President George W. Bush managed to keep the Republicans in Congress united, but starting with 2005 the fissures separating the congressional Republicans deepened. Moreover, Congress passed the anti-torture amendment in spite of the strong opposition of the George W. Bush administration: The rift between Congress and the White House was now obvious. President Bush and his administration were further and further losing touch with the American people, and subsequently with Congress. In a way, President Bush's relation with Congress clearly followed the decline of his job approval rate.

President George W. Bush wanted to follow Ronald Reagan's conservative fiscal policies and he promoted a wide range of tax cuts even as United States was at war on two fronts. Moreover, the compassionate conservative social policies of his first term in office added to the mounting war expenses, resulting in a growing budget deficit. President George W. Bush inherited a comfortable budget surplus from the divided government of the Clinton administration. Following President Bush's policy of extensive tax cuts combined with increased funding for social programs, for defense, and for the war effort, the national debt almost doubled by 2007. President Bush claimed that going to war in Iraq made America safer, but his fiscal policy undermined the very fundament of America's strength, because no country in financial trouble is safe. Moreover, with the United States already engaged in two wars, aggressive leaders in countries like Iran and North Korea felt safe to pursue nuclear ambitions, putting the whole world at risk.

The 9/11 terrorist attacks redefined the priorities of the American government, yet the war in Iraq became the hallmark of George W. Bush's presidency. The initial military success, followed by the capture of Saddam Hussein, and the difficult progress towards a democratic society in Iraq, was marred by the U.S. troops' inability to contain the insurgency, by the growing number of casualties, and by the Abu Ghraib inmates' mishandling scandal. George W. Bush and in fact his whole administration put their reputation at stake when they claimed

that Saddam Hussein was in possession of weapons of mass destruction. The weapons of mass destruction were never found, and the credibility of the George W. Bush administration suffered accordingly. The United States lost the substantial capital of sympathy in the world as well as the moral upper hand in the War on Terror. However, the George W. Bush administration was highly regarded in Africa due to its successful anti AIDS program, and in Eastern Europe due to its support for the NATO expansion.

The legacy of George W. Bush's troubled presidency, affected by natural disasters, by terrorist attacks on American soil, and by the loss of human lives in the subsequent War on Terror can be assessed from two points of view: a contemporary one and a historical one. The contemporary assessment has an important advantage; the contemporary analyst was observer and witnessed the events that triggered the response of the United States government. Yet the political developments and their implications might affect the objective evaluation of the contemporary author. On the other hand, the historical perspective is not affected by hasty judgments made as events unfolded, therefore it gains in objectivity. Time has to pass for history to have its say, and a balanced view detached from the heat of the moment is yet to come.



## APPENDIX 1

Table 2

Significant legislation enacted during the 108<sup>th</sup> Congress.

Nr	Cleared for White House	Code	Party Control	Name of the Law
1	May 23 2003	PL108-027	U	Jobs and Growth Tax Relief Reconciliation Act of 2003
2	Oct. 21 2003	PL108-105	U	Partial-Birth Abortion Ban Act of 2003
3	Nov. 21 2003	PL108-148	U	Healthy Forests Restoration Act of 2003
4	Nov. 25 2003	PL108-173	U	Medicare Prescription Drug, Improvement, and Modernization Act of 2003
5	Dec. 08 2003	PL108-187	U	Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (Do not Spam)
6	Mar. 25 2004	PL108-212	U	Unborn Victims of Violence Act of 2004
7	Sept. 23 2004	PL108-311	U	Working Families Tax Relief Act of 2004
8	Oct. 09 2004	PL108-405	U	Justice for All Act of 2004
9	Oct. 11 2004	PL108-357	U	American Jobs Creation Act of 2004 (Corporate Tax Overhaul)
10	Dec. 08 2004	PL108-458	U	Intelligence Reform and Terrorism Prevention Act of 2004

**Source:** Compiled from THOMAS, legislative information from the Library of Congress

Available at: <http://www.thomas.gov/>

Table 3

Significant legislation enacted during the 109<sup>th</sup> Congress.

Nr.	Cleared for White House	Code	Party Control	Name of the law
1	Feb. 17 2005	PL109-002	U	Class Action Fairness Act of 2005
2	Apr. 14 2005	PL109-008	U	Bankruptcy Abuse Prevention and Consumer Protection Act
3	July 28	PL109-053	U	Dominican Republic-Central America-United States Free Trade Agreement Implementation Act
4	July 29 2005	PL109-059	U	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
5	July. 29 2005	PL109-058	U	Energy Policy Act of 2005
6	Dec. 21 2005	PL109-148	U	Department of Defense Appropriations Act, 2006 (Mc Cain's Amendment – Torture Ban)
7	Feb. 01 2006	PL109-171	U	Deficit Reduction Act of 2005
8	May 11 2006	PL109-222	U	Tax Increase Prevention and Reconciliation Act of 2005
9	Sept. 29 2006	PL109-366	U	Military Commissions Act of 2006
10	Dec. 09 2006	PL109-401	U	Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006
11	Dec. 09 2006	PL109-432	U	Tax Relief and Health Care Act of 2006 (Offshore Drilling in the Gulf of Mexico)
12	Dec. 09 2006	PL109-435	U	Postal Accountability and Enhancement Act

**Source:** Compiled from THOMAS, legislative information from the Library of Congress

Available at: <http://www.thomas.gov/>

Table 4

Significant legislation enacted during the 110<sup>th</sup> Congress.

Nr.	Cleared for White House	Code	Party Control	Name of the Law
1	May 24 2007	PL110- 028	D	U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 – Minimum wage
2	July 27 2007	PL110- 053	D	Implementing Recommendations of the 9/11 Commission Act of 2007
3	Aug. 02 2007	PL110- 081	D	Honest Leadership and Open Government Act of 2007
4	Sept. 07 2007	PL110- 084	D	College Cost Reduction and Access Act
5	Dec. 18 2007	PL110- 140	D	Energy Independence and Security Act of 2007

**Source:** Compiled from THOMAS, legislative information from the Library of Congress

Available at: <http://www.thomas.gov/>

Table 7

The composition of the U.S. Senate by political affiliation 2001-2007

	107 <sup>th</sup> Congress		108 <sup>th</sup> Congress	109 <sup>th</sup> Congress	110 <sup>th</sup> Congress
Republicans	50	49	51	55	49
Democrats	50		48	44	49
Independents	0	1(Dem)	1(Dem)	1(Dem)	2(Dem)

**Source:** Congressional Research Service Reports

Available at: <http://digital.library.unt.edu/govdocs/crs/searchform.tkl>

Table 8

The composition of the House of Representatives by political affiliation 2001-2007

	107 <sup>th</sup> Congress	108 <sup>th</sup> Congress	109 <sup>th</sup> Congress	110 <sup>th</sup> Congress
Republicans	222	227	230	202
Democrats	211	205	202	233
Independents	2	1	1	0
Vacancies	0	2	2	0

**Source:** Congressional Research Service Reports

Available at: <http://digital.library.unt.edu/govdocs/crs/searchform.tkl>

Table 9

Signing statements and presidential vetoes 2001-2007

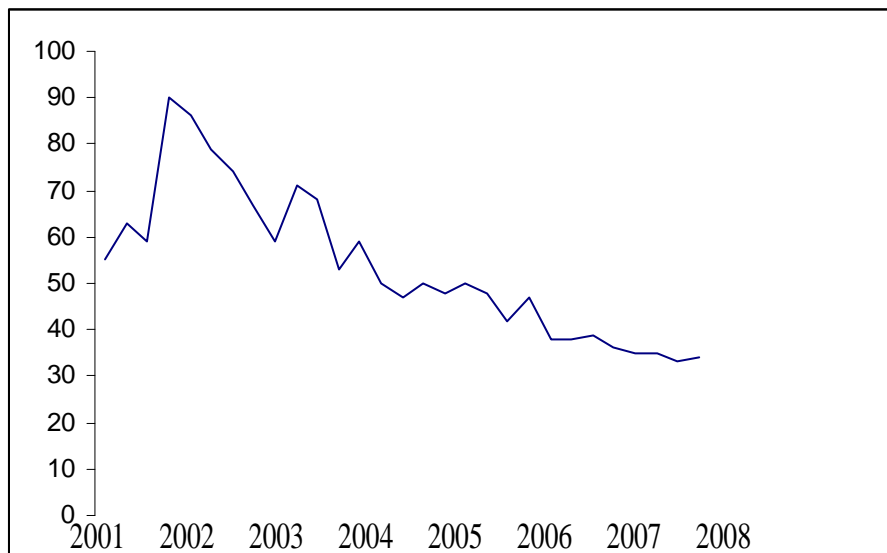
YEAR	SIGNING STATEMENTS	VETOES
2001	24	0
2002	34	0
2003	27	0
2004	24	0
2005	14	0
2006	23	1
2007	8	7

**Source:** Data compiled from Presidential Signing Statements. 2001 - Present

Available at: <http://www.coherentbabble.com/listGWBall.htm>

Figure 2

President George W. Bush's job approval rate 2001-2007.



**Source:** Compiled from ABC News/Washington Post poll

Available at: <http://www.pollingreport.com/BushJob1.htm>

## **APPENDIX 2**

### **Healthy Forests Restoration Act of 2003**

The 2002 catastrophic wildfires brought into focus the necessity of new legislation allowing federal action to limit the amplitude of the fires by thinning the forests. The wildfires were the result of overprotecting the forest with the consequence that old dry wood piled up and could be transformed into a raging inferno at the first spark. President George W. Bush proposed legislation allowing some logging and thinning of forests, restricting the ability of environmental groups to delay or even stop the work by endless lawsuits.

In May 2003, the House passed a bill allowing forest thinning in order to reduce the risk of wildfires. Environmentalists reacted immediately, opposing the bill and demanding protection for large, old trees. They claimed that the bill would do little to protect communities situated close to forests. Democrat senators took a similar position and opposed the House bill, but a bipartisan group took the initiative and elaborated a compromise version. Even so, the bill stalled in the Senate. A new wave of wildfires in California became the catalyst that removed the last obstacles. The bipartisan compromise version of the bill was passed by unanimous consent in the Senate, and by a 286-140 vote in the House. (*Congressional Quarterly Almanac 2003*, p.C10)

### **Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003**

The “do not spam” bill intended to reduce the amount of unsolicited e-mail commercial advertising, because these messages flooded the internet users’ inboxes. The bill enforced the use of the senders’ real names and valid postal addresses. According to the bill, commercial messages are required to provide the possibility for the recipient to refuse further messages from the same sender. The bill establishes federal standards, overriding states own anti-spamming legislation. It also allows the Federal Trade Commission to investigate the feasibility of a “do not spam” registry nationwide. The bill does not restrict the political messages sent by Congress members and candidates during elections. (Lee, 2003) This piece of legislation enjoyed strong bipartisan support and passed by unanimous consent in the Senate and by a 392-5 vote in the House.

### **Justice for All Act of 2004**

The United States has 25% of all inmates of the world and capital punishment is enforced in 36 states. (Death Penalty Information Center) Many countries abolished the death penalty, but the United States took another path. The George W. Bush administration supported DNA testing for criminals, as a way of making sure nobody was wrongfully convicted. In fact as early as 2001, Democrat Senator Patrick J. Leahy introduced a bill called the Innocence Protection Act, allowing DNA testing for prisoners on death row in order to establish their innocence, but the bill could not advance in Congress.

In 2003, President George W. Bush signaled his support for more decisive action to accelerate DNA testing in rape cases. Republican Representative James Sensenbrenner in September 2004 introduced a measure combining these initiatives. According to this bill, inmates get access to post-conviction DNA testing. The bill also established a DNA testing program, named after Kirk Bloodsworth, the first death row inmate exonerated and pardoned following DNA testing. He had spent almost nine years in prison for a rape and a murder he did not commit. The bill did not progress until a provision on new rights for crime victims was added, and then it gained bipartisan support. As the 2004 elections were approaching, the bill passed quickly/rapidly/at high speed. It passed in the House by a 393-14 vote on October 6, and then it passed in the Senate by unanimous consent three days later. (*Congressional Quarterly Almanac 2004*, pp.12.8-12.9)

### **Class Action Fairness Act of 2005**

The Class Action Fairness Act of 2005 was meant to restrict class action lawsuits and shift jurisdiction from state courts to federal courts. It was a high priority of the GOP and a priority on the White House agenda too. However, for six years the Republicans had not been able to overcome the opposition to this bill in the Senate. In 2005, they hurried the bill first in the Senate, where five Democrat-sponsored amendments were easily defeated. The bill passed on February 10 by a 72-26 vote, being supported by 18 Democrat senators. (*Congressional Quarterly Almanac 200*, p.C4)

### **Postal Accountability and Enhancement Act**

The information technology revolution has introduced radical changes in the way messages travel across countries and continents. More and more people rely on email rather than on classic mail services. The federal postal services have been in constant decline because they faced competition not only from the internet, but also from private carrier companies, like

UPS and DHL. The postal services overhaul bill had the attention of Congress for more than ten years.

The House passed a new version of the bill in 2005, and the Senate passed its own version in February 2006. In spite of bipartisan support, the bill could not advance any further due to disagreements between Congress and the White House. Actually a similar bill could not be finalized in 2004 because of George W. Bush's veto threats. In 2006, President Bush again threatened to veto the bill over two controversial provisions: the transfer of military pensions for postal workers to the Department of the Treasury, and the requirement of the escrow account for retiree health care benefits. A bipartisan group of congressmen managed to negotiate a compromise with the White House. The compromise bill was introduced as a new bill on December 7, 2006, and was passed in the House by voice vote on December 8. It passed in the Senate, also by voice vote, the next day. The postal service overhaul was a long overdue reform, the first one since the creation of the Postal Service in 1970. (*Congressional Quarterly Almanac 2006*, pp.11.3-11.4)



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